The Karaite Halakah And Its Relation To Sadducean, Samaritan And Philonian Halakah

Part One (1913)

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THE KARAITE HALAKAH

AND ITS RELATION TO SADDUCEAN, SAMARITAN AND PHILONIAN HALAKAH

PART I

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INQUIRY INTO THE SOURCES OF KARAITE HALAKAH

THE causes of the Karaite schism and its early history are veiled in obscurity, as indeed are all the movements that originated in the Jewish world during the time between the conclusion of the Talmud Babli and the appearance of Saadia Gaon.

From the meager contemporary sources it would seem that from the second third of the eighth century until the downfall of the Gaonate (1038) the whole intellectual activity of Babylonian Jewry centered about the two Academies and their heads, the Geonim. Of the early Gaonic period the Jewish literature that has reached us from Babylonia is mainly halakic in character, e. g. *Halakot Gedolot, Sheeltot,* and works on liturgy, which afford us an insight into the religious life of the people. From them, however, we glean very little information about the inner life of the Jews in Babylonia before the rise of Karaism; hence the difficulty of fully understanding the causes which brought about the rise of the only Jewish sect that has had a long existence and has affected the course of Jewish history by the opposition it has aroused.

The study of sects always has a peculiar interest. During the thirties of the last century, the Karaites themselves made accessible to the scholarly world the works of

some of their latter-day authorities, and with the publication of Simḥah Pinsker's epoch-making work "Liḳḳuṭe Ḳadmoniyyot" (1860) the attention of Jewish scholarship was turned to Karaism and its literature. Pinsker, blinded by his discovery of an important phase in the development of Judaism, invented a pan-Karaite theory, according to which the Karaites are to be looked upon as the source of all intellectual achievement of mediæval Judaism (*Liḳḳuṭe*, I, 4, 32). The Masorah is a product mainly of theirs, and it is among them that we are to look for the beginnings of Hebrew grammar, lexicography, poetry, and sound biblical exegesis. The Rabbanites, since Saadia Gaon, were merely imitators of the Karaites. Pinsker believed that every Jewish scholar, prior to the eleventh century, who busied himself with the study of Bible alone, was a Karaite, and he transformed, accordingly, more than one Rabbanite into a Karaite.

The question of the origin of Karaism, its causes and early development is still awaiting solution. That Karaism is not the result of Anan's desire to revenge himself on Babylonian official Jewry, need not be said. Karaite literature affords us no data; there is a marked lack of historical sense among them. They have no tradition as to their origin, and their opinions are conflicting (comp. Pinsker, *Liḳḳuṭe*, II, 98). The belief that Karaism is but an echo of a a similar movement during this period in the Islamic world is now generally given up owing to the advance made in the knowledge of the inner development of Islam and, particularly, the nature of the Shiite heterodoxy (see I. Friedlaender, *JQR.*, 1910, 185 ff.).

This question is bound up with the problem of the origin of the Karaite halakah which is of vital importance

ing the understanding the history of Tradition; as Geiger (*ZDMG.*, XVI (1862), 716) says, it was always the differences in practice, not in dogma, that caused and sustained divisions in Israel. This is particularly true of the Karaites who differ in nothing but religious practices from the rest of Israel.

The solution offered by Geiger that the Karaites are the descendants of the Sadducees and their halakah Sadducean, is accepted with some modification by many scholars (comp. Poznański, *REJ.*, XLIV (1902), 169). On the other hand, the eclectic nature of the Karaite halakah was recognized by several scholars (comp. S. L. Rapoport in *Kerem Chemed*, V (1841), 204 ff., and in Kaempf's *Nichtandalusische* Poesie, II, 240; P. Frankl, *Ersch u. Gruber*, sec. II, vol. 33, 12; Harkavy, in Grätz' *Geschichte*, V.[4], 482 ff.; *id.*, *Jahrbuch f. jüd. Geschichte u. Literatur*, II (1899), 116 ff., and elsewhere). No attempt was, however, made to explain the bulk of the Karaitic halakah, on these lines. I have therefore undertaken the work of tracing the individual Karaite laws to their respective sources, which will, at the same time, be the first exposition of the Karaite laws in general—prefacing it by an examination of the Sadducean-Karaitic theory. The term "Karaite halakah" is used here as a convenient one, though, as Kirkisani has unwillingly shown—and any Karaite code testifies to it—the laws on which all Karaites agree are few. The Karaite laws are discussed here not according to subject matter, but such as have common source are grouped together. I begin with Philo, as the relation of Karaite halakah to that of Philo has remained, to my knowledge, hitherto unnoticed. This relation, if established, may prove helpful in the understanding of other

points in the inner history of Judaism during the biblical centuries of Islam.

For the halakah of Philo, I have used the work of Dr. B. Ritter, *"Philo und die Halacha, eine vergleichende Studie,"* from which most of the citations from Philo in this treatise are taken. Other Philonian laws, not treated by Ritter, are discussed here, but only as they bear on the Karaite halakah.

Not all the early Karaites claimed antiquity for their schism. This is evident from the reply of Salman b. Yeruḥam to Saadia's mention of their late origin (Pinsker, II, 19).[1] Another contemporary of Saadia, Abu Jusuf Yaḳub al-Ḳirḳisani, the most reliable historian among the Karaites, gives a date for what he calls the Rabbanite dissension: Jeroboam, to make permanent the power he had usurped and to prevent the Israelites owing allegiance to the house of David, divided the nation by sowing the seed of dissension, perverted the Law, and changed the calendar (I Kings 12, 32). The followers of Jeroboam in later times are called Rabbanites. Those who remained faithful to the original laws were the ancestors of the Karaites.[2] This fanciful explanation found no credence even among the Karaites.[3]

[1] באמרך בעלי מקרא חדשים ורבותי הישנים הם קדושים. אם בעלי התועבות האלה וכאלה מקודשים סיסרא וחמן וזולתם בגן עדן נפושים; comp. also Salman b. Yeruḥam's commentary on Ps. 96, 1 (Winter u. Wünsche, *Jüdische Literatur*, II, 80). See, however, Harkavy in Grätz, *Geschichte*, V⁴, 472. That not all the Karaite contemporaries of Saadia claimed antiquity for their sect is evident also from Saadia's fourth answer in his polemical work against Ibn Sāḳaweihi. See *JQR.*, XIII, 664; הקדם, I, 67.

[2] Comp. Poznański, *REJ.*, XLIV (1902), 162 ff.

[3] It was, however, taken up again by the twelfth century Karaite, Elias b. Abraham, in his חלוקי הרבנים והקראים (Pinsker, II, 100 ff.). He

The Karaites felt keenly the need of some account of their origin that would silence the reproach of the Rabbanites and found in the event recorded in the Baraita (Ḳiddushin 66*a*; see Josephus *Ant.*, XIII, 13, 5) a basis for claim of ancient origin for their sect. As stated in that narrative, the disagreement between John Hyrcanus and the teachers of the Law resulted in the extermination of the latter, excepting Simeon b. Shataḥ. As a consequence, ignorance of the Law prevailed until Simeon appeared and reinstated it.

והיה העולם מישתומם עד ישבא שמעון בן שטח והחזיר את התורה ליושנה

Simeon, say the Karaites, being at that time the sole authority, introduced many innovations upon his return and changed the true interpretation of the Law. To enforce these new laws, he invented the fiction that besides the Written there is also an Oral Law given to Moses on Sinai and handed down from generation to generation, and that the laws proclaimed by him went back to this real tradition.

The people followed him blindly. But some of them, knowing the false basis of these changes, rejected them and adhered to the ancient Tradition in all its purity; those were the Karaites.[4]

adds that those who remained faithful to the original faith migrated מעבר לנהרי כוש and only few of them, because of their attachment to the Temple, remained in Jerusalem. Yet, as Pinsker (II, 98) remarks, Elias himself put little confidence in this myth. For the origin of this legend, see A. Epstein *Eldad ha-dani* (Pressburg 1891), p. 1. For later Karaites repeating this story, see Poznański, *l. c.*, p. 163; comp. *ZfhB.*, III, 92 (end) and 93, for the view of a tenth century Karaite (comp. *ib.*, 90 and 172 ff.).

[4] As a striking instance of the purely mythological character of the Karaite beliefs about their origin and past, I shall illustrate the three strata in the development of the last mentioned Karaite theory of their origin. Sahl b. Maṣliaḥ (tenth century) asserts that Karaism goes back to the time of the second Temple, but connects it with no specific event (Pinsker, II, 35). This is still the opinion of Aaron b. Elias (fourteenth century)

On the other hand, most of the Mediæval Jewish scholars seem to agree that Karaism was due to a revival of the Sadducees (Abraham Ibn Daud) or that Sadducean elements are prominent in it (Saadia, Judah Halevi). Saadia Gaon (891-942) was the first to meet the Karaites in open battle[5] and refute their claims for recognition. He states that Karaism is of recent origin (Pinsker, II, 19) and that Anan's breaking with Tradition was due entirely to

in Introduction to his כתר תורה, 4*a*. Elias b. Moses Bashyazi a century later connects the schism with the name of Simeon b. Shataḥ and exclaims: או שהיה שמעון בן שטח נהרג כשאר החכמים שנהרגו היינו כלנו לעם אחד (intr. to אדרת אליהו, Goslow 1834, 3*a*.). He is followed by his disciple Kaleb Afendopolo in his עשרה מאמרות (quoted in דוד מרדכי, Wien 1830, 9*a*). The sixteenth century Karaite prodigy Moses b. Elias Bashyazi (born 1554 and said to have died 1572) amplified this tale by asserting in his מטה האלהים (quoted in דוד מרדכי, 9*b* ff.) that Judah b. Ṭabbai, who had also survived the king's wrath, opposed the innovations introduced by Simeon b. Shataḥ as also his fiction of an oral law. Judah attracted to his banner all those who remained faithful to ancient traditions. Simeon and Judah each became the head of a school, thus dividing the Jews into two factions. Simeon was succeeded by Abṭalion, Abṭalion by Hillel who systematized the new laws based on the fiction of the Oral Law. Judah b. Ṭabbai was followed by Shemaiah, and Shemaiah by Shammai; those two being the great Karaite teachers from whom the line of succession was never interrupted. Already Jepheth b. Said asserted that Shammai was the teacher of the Karaites (Pinsker, II, 186; comp. *ib.*, I, 6); see also Luzzatto, כרם חמר, III (1838), 223; Geiger, *ib.*, IV, 12; Gottlober, בקרת לתולדות הקראים, Wilna 1865, 5 ff. How foreign this idea was to the early Karaites, is seen from what Salman b. Yeruḥam says of Bet Shammai and Bet Hillel (כרם חמך IV, 13): תועבת ה' גם שניהם.

[5] We know of two Rabbanites who combated Karaism before Saadia: the Gaon Naṭronai b. Hilai (סדר רב עמרם, 38*a*) and the Gaon Hai b. David (Harkavy, *Studien u. Mittheilungen*, V, 108, n. 2; comp. Bornstein, ספר היובל לנחום מאקאלאוו, Warsaw 1904, 158, n. 2, who believes this Gaon to have been Hai b. Naḥshon). For anti-Karaite legislation by Jehudai Gaon see L. Ginzberg, *Geonica*, I, 111, n. 2. For Saadia's anti-Karaite writings, see Poznański, *JQR.*, X, 238 ff., and additions, *ib.*, XX, 232 ff.

personal motives (*ib.*, 103).[6] Yet he adds that the remnants of Zadok and Boethus joined Anan (*l. c.*). About two centuries later, a time which was decisive in the battle between traditional Judaism and the Karaites,[7] the three great lights of Toledo, Judah Halevi, Abraham Ibn Ezra, and Abraham Ibn Daud, each strove to check the Karaite propaganda in Spain[8] carried on at that time with great zeal by Ibn al-Taras, the disciple of Jeshua b. Judah, and they all assert that Karaism is an offshoot of Sadduceeism. Judah Halevi declares that the Karaite schism arose in the time of John Hyrcanus. The Karaites, says he, are superior to the Sadducees in questions of dogma, but agree with them in important religious questions.[9] Abraham Ibn Ezra also identifies them with the Sadducees. In his commentaries on the Bible, which are strongly anti-Karaitic, he usually styles them[10] צדוקים. More emphatic is Abraham Ibn Daud in his *Sefer Hakḳabalah,* where he says that "after the destruction of the Temple the Sadducees dwindled to almost nothing until Anan appeared and strengthened them."[11] Likewise, Maimonides, commenting

[6] That Saadia is meant by ולבן דתכם אשר חרף, see Pinsker, p. 98; comp. Poznański, *JQR.*, X, 242.

[7] Comp. Frankl, *MGWJ.*, XXI (1882), 3 ff.

[8] Spain was from early Gaonic times infected with Karaism; comp. Ginzberg, *l. c.*, I, 123, note 1; Frankl, *MGWJ.*, 1888, 6 ff.; and Poznański, *JQR.*, XVI, 768-9. Against the view of Hirschfeld (*JQR.*, XIII, 225 ff.) that some relation existed between the Karaites and the Zahirites in Spain, see Goldziher, *REJ.*, XLIII (1901), 6-7.

[9] Kuzari, III, 65. Judah Halevi's view is shared by Abrabanel, נחלת אבות, and S. Duran, מגן אבות on Abot 1, 3, and II, *21a; 31a.*

[10] Introduction to his Commentaries on the Bible; Lev. 3, 9; 23, 17, 40. As to the relation of Ibn Ezra to the Karaites, see J. S. Reggio, אגרות יש"ר, I (Wien 1834), 42 ff.; see also D. Rosin, *MGWJ.*, XLIII, 76-7.

[11] Neubauer, *Mediaeval Jewish Chronicles,* I, 64. The variant מינים does not affect the meaning of the statement.

(Abot 1, 3) on the dissension of Zadok and Boethus, adds: "In Egypt they are called Karaites, while in the Talmud they are named Sadducees and Boethusians."[12]

Elias b. Moses Bashyazi, a fifteenth century Karaite, tells us, in the introduction to his אדרת אליהו, 3*a*, that it is the opinion of all the Rabbanite scholars that the Karaite schism goes back to Zadok and Boethus.

Much confidence, however, was not placed in this testimony of the Mediæval Rabbanites, that the Karaites descended from the Sadducees, as it is evident that the Rabbanites were often actuated by the desire to stamp their opponents in the eyes of the people as descendants of that hated sect which denied divine Providence and resurrection.[13] In the middle of the last century Abraham

[12] See his commentary on Hullin 1, 3. On the views of Maim. on the Karaites, see כפר היובל למשה בלאך (Budapest 1905), Hungarian part, 164-170; see also the other authors mentioned by Poznański, *REJ.*, *ib.*, 170, to which may be added Estori ha-Pharḥi כפתר ופרח, end of ch. 5 (ed. Luncz, p. 61); David Abi Zimra, *Responsa*, IV, resp. 219; Meiri on Abot 1, 3. See also Responsum No. 34 in the Gaonic collection שערי תשובה: ורוב מן החיצונים תלמידי בייתוס.

[13] Comp. David Messer Leon (published by Schechter), *REJ.*, XXIV, 126. See Weiss, דור דור ודורשיו, IV, 53. Joseph al-Baṣir is the only one among the Karaites who identifies the Karaites with the Sadducees (Harkavy, *l. c.*, p. 473). Kirkisani states that the Sadducees revealed part of the truth and that there were no Sadducees in his days (ch. 18, p. 317). Jepheth b. Alī (Poz., *ib.*, 171-2) and Hadassi (Alphabeta 97, 98) speaks of the Sadducees with contempt. The statement by Jacob b. Reuben (Pinsker, II, 84) that the Karaites are the descendants of the Sadducees was, therefore, taken by him from Joseph al Baṣir's כתאב אלאסתבצאר and not from Jepheth b. Alī, as Harkavy (Grätz, *Geschichte*, V[4], 474) suggests. Nor is Harkavy (*l. c.*) right in his assertion that Elias b. Abraham shared this view. See above note 3. Comp. also Pinsker, I, 11-12. The later Karaites claimed that the imputation that they were in some way related to the Sadducees was due to the hatred the Rabbanites bore them. See Kaleb Afendopolo, quoted in דור מרדכ, *ab.*

Geiger attempted to prove historically the descent of the Karaites from the Sadducees,[14] and this view constitutes an essential part of his epoch-making theory concerning the internal development of post-exilic Judaism and the history of Jewish sects. His view is accepted by Holdheim,[15] Fürst,[16] Harkavy,[17] Chwolson,[18] and others. A general survey of Geiger's theory[19] will help us better to understand the questions involved.

From the earliest times, says Geiger, two distinct, or, rather, antagonistic currents were at work shaping the history of Judaism. The dualism revealed itself in olden times in the divided nationality of Ephraim (or Joseph) and Judah. Ephraim constituted a worldly kingdom, in constant contact with the neighboring nations and, therefore, in need of a sacrificial and ceremonial religion and a powerful priesthood to protect it from the surrounding heathen influences. Judah, on the other hand, constituted a kingdom politically insignificant, compact and isolated, and less susceptible to foreign influences, with one national sanctuary and a less developed priesthood.[20] Judah escaped the fate of Ephraim and awoke to new life in the sixth

[14] *Des Judenthum u. s. Geschichte*, II, 55 ff.; *Jüd. Zeitchrift*, VIII, 227-233; *Nachgelassene Schriften*, II, 135 ff.; *Urschrift*, index, *s. v.* "Karaiten"; and elsewhere.

[15] מאמר האישות, Wien 1861, 128 ff.

[16] *Geschichte d. Karäerthums* (Leipzig 1862), I, 8 ff.

[17] In Russian periodical "Woschod," 1896, and elsewhere; comp. *id.*, לקורות הכתות בישראל, 4, 19.

[18] *Das letzte Passamahl Christi* (2 ed., Leipzig 1908), pp. 148, [illegible] ff.; *id.*, *Beiträge zur Entwicklungsgeschichte d. Judenthums* (Leipzig 1910), p. 8 ff.; comp. V. Aptowitzer, *Die Rechtsbücher d. nestorianischen Patriarchen*, 1910, pp. 7-8.

[19] For a more detailed account see Poznański, *Abraham Geiger, Leben u. Lebenswerk*, Berlin 1910, 352-388.

[20] *Jüd. Zeitschr.*, VIII (1870), 279 ff., and elsewhere.

century B. C. With this new life came a struggle, in which priestly aristocracy and sacerdotal rule were antagonized by tendencies towards religious and political democracy that asserted themselves more and more. Since the establishment of the second commonwealth the priests ruled the nation. There stood at the head of the state a high-priest, descendant of the family of Zadok, the chief of the priesthood in the days of David and Solomon (I Kings, 1, 34; 2, 35; I Chron. 29, 22), members of which had exercised priestly functions ever since the building of Solomon's Temple. This family and those related to it constituted the nobility of the nation and since the Return controlled the secular as well as the religious life of the people.

This power, blended with the attribute of holiness, soon led the priestly ruling class to disregard the needs and demands of the people. They stood for the ancient laws and observances, which established and asserted their rights and prerogatives, admitting no modification which the times required. They also allied themselves with the Syrians and cultivated tastes and habits distasteful to the people.[21] With the victory of the Maccabees the government and the high-priesthood passed over to the latter, the Sadducees, the old nobility, joining them. An opposition against them arose among the people, the leaders of which were known as the "Separated" (*Perushim*), descendants of those who in the days of Zerubbabel and again in the

[21] *Ib.*, p. 282 ff.; *Jüd. Zeitschr.*, II, 17 ff.; *ZDMG.*, XIX, 603 ff. An offshoot of the Sadducees, and united with them were the Boethusians, a new aristocratic priestly family called after Simon b. Boethus, high-priest and father-in-law of Herod I (*Urschrift*, 102, 134 ff., 143 ff.). Herzfeld, *Geschichte*, II, 387, accepts the view of Azariah dei Rossi that the Boethusians are the Essenes spoken of by Philo and Josephus. See also *REJ.*, III, 113 ff. and Chwolson, *Das letzte Passamahl Christi*, 28, 129.

time of Ezra separated themselves from heathen surroundings and influences (Ezra 6, 21; 9, 1; Neh. 9, 2). Their aim was to limit the power of priestly aristocracy and turn the government over to the people. The Pharisees recognized the sanctity of priesthood, but contested the centralization of secular power in the hands of the sacerdotal-aristocratic families.

The difference between these two parties, originally small and of a general nature, widened in time. The spirit of rivalry in this politico-religious struggle brought about laws and regulations on the part of the Pharisees intended to check the authority and diminish the privileges of the priests. Personal purity and sanctity of all the people were to take the place of the sanctity of priesthood. The Pharisees devised new rules of interpretation which enabled them to limit and restrict the biblical laws establishing priestly rights. On the other hand, many laws of purity and observances concerning food, originally intended for the priests and the Temple, they made apply to all the people in and outside of the Temple.[22] So the Pharisees did not adhere to the letter of the Law, but taught and expanded the Law with regard to its inner spirit and the needs of the time, whereby they created a new Halakah differing in content as well as in spirit from the ancient, Sadducean, tradition.[23] The majority of the people followed the new Halakah, but the Sadducean teachings found acceptance outside of Judah proper. The Samaritans, descendants of Northern Israel, were not allowed by the leaders of the national party in the time of Zerubbabel to participate in the further development of Judaism (Ezra

[22] *Jüd. Zeitschr.*, VI, 265 ff.

[23] *Urschrift*, 156 ff., 176, 434 ff.; *Nachgelassene Schriften*, II, 121 ff.; V (Heb.), 112 ff., 142 ff. and elsewhere.

4, 1 ff.). The ancient feud between Ephraim and Judah thus revived. The rejected Samaritans who retained the ancient Israelitish tradition as well as the ancient interpretation of the Law, clung, like the Sadducees, to those traditions and stood for priestly prerogative, characteristic of the religion of Northern Israel and the Sadducees. This accounts for the many practices and interpretations of the law that are common to the Sadducees and the Samaritans.[24]

But, even in Judah, only the political antagonism between the Pharisees and the Sadducees ceased with the destruction of the Temple. The Sadducees, whose existence as the priestly aristocracy and ruling class depended upon the state and the Temple, ceased to control the life of the people. But the religious differences between these two parties did not disappear.

The victorious Pharisees, who ruled the day, rejected all traditions, preserved by the Sadducees, which tended to affirm the exclusive rights of the priests, and the whole body of traditional law was now made to conform to their views. Not all the Pharisaic teachers, however, agreed to these radical changes, and some of them retained their allegiance to the pre-Pharisaic Halakah. Notably among them are Shammai and his school represented by R. Eliezer b. Hyrcanus and Jose the Galilean.[25]

But official Pharisaism did not heed them. It established as a religious norm the interpretations and laws which emanated from the school of Hillel, the great cham-

[24] *Nachg. Schriften*, III, 258 ff., 284 ff.; IV, 65; V (Heb.), 149 ff.; *ZDMG.*, XII, 132 ff. and elsewhere.

[25] *Jüd. Zeitschrift*, VIII, 283 ff. and elsewhere; comp. Hoffmann, *Magazin* 1884, 19.

pion of Pharisaism, who began the systematization of the new Halakah. Hillel's work was firmly established by R. Akiba and brought to completion by Judah Ha-nasi. Two centuries later the center of Judaism was transferred to Babylonia, and soon all consciousness of an earlier and differing Halakah disappeared.[26]

Zealously as the Pharisees of the school of Hillel worked to exclude and annul the laws and traditions tainted with Sadducean views, traces of the latter are still found in some of the apocryphal books; in the Greek version of the Scriptures (LXX); in the Aramaic version, Pseudo-Jonathan;[27] in the halakic midrashim from the school of R. Ishmael, himself a priest and with priestly sympathies,[28] and, to a lesser extent, in the later Palestinian halakic works, Tosefta and Talmud Jerushalmi.[29]

But not only are we able to reconstruct parts of the Sadducean Halakah through the traces in these works, but the Sadducean tradition is still alive, its laws are observed and its practices carried out by their descendants, the Karaites; not only are they the followers and spiritual heirs of the Sadducees, but their physical descendants. Doctrines and practices adhered to and observed by a nation do not disappear at the desire of its leaders. Nor were the Sadducees annulled. The descendants of the once dominant party continued to live according to the traditions of their ancestors. The religious unrest prev-

[26] *Jüd. Zeitschrift*, VIII, 284 ff.

[27] *Urschrift*, 165; 451 ff.; *Nachg. Schriften*, IV, 108 ff.; V (Heb.), 112 ff.; see below.

[28] מכילתא and ספרי; *Urschrift*, 434 ff.; *Jüd. Zeitschr.* IV, 96 ff.; VIII, 284; IX, 8 ff.; XI, 51 ff., and elsewhere.

[29] See *Jüd Zeitschrift*, VIII, 291 ff. For the Jerushalmi comp. *MGWJ.*, 1871, 120 ff.

alent in the Islamic world in the eighth century caused them also to unite and defy their old enemies, the Pharisees. Their leader Anan gave them his name, which was, however, soon changed to the appellation קראים or בני מקרא.

Karaism is, thus, not to be looked upon as a late-day revolt against the authority of Tradition caused by outside influence, but is a survival in a somewhat modified form (as by belief in resurrection) of the pre- and anti-Pharisaic tradition.[20]

[20] D. Chwolson in his *Beiträge zur Entwicklungsgeschichte d. Judenthums* (Leipzig 1910) goes further than Geiger, and asserts that long after the destruction of the Temple, the Sadducees were predominant (pp. 10-22). He bases this view on the assumption that during the time of the Second Commonwealth the Sadducees constituted not only the priestly and secular aristocracy, but also the bulk of the people, their disappearance with the destruction of the State being therefore inconceivable (p. 23 ff.).

Chwolson also believes that it was the people who remained faithful to the Sadducean tradition who are designated in the talmudic literature by the name עם הארץ. This accounts for the mutual hatred that existed between the Am-haareṣ and Pharisaic teachers (p. 9). Chwolson adduces the talmudic account (b. Berakot 47*b* and parallel) of the ceremonies the non-observance of which characterized the Am-haareṣ, as proof of the latter being identical with the Sadducees. It is there said that the Am-haareṣ does not read the *Shema'*; that he does not put on the *phylacterics;* that he does not wear *fringes* on his garments and that he has no *Mezuzah* on his door. Now the Karaites even up to this day observe none of these ceremonies. Some relationship must exist between the Am-haareṣ and the Karaites. As the Karaites are, Chwolson believes, descendants of the Sadducees, a relationship is established between the Am-haareṣ and Sadducees.

The facts are, however, not as Chwolson puts them. The Karaitees have never rejected the biblical precept of ציצית, even if they differ as to the meaning of תכלת and some other details; see, for Anan, Harkavy, כפר המצות לענן, pp. 7-10, and Schechter, *Jewish Sectarics,* II, 25, 1-26, 17; Hadassi, Alph. 241 and 364 (136*b*); Mibḥar, Num., *ad loc.,* גן עדן, 80*b* ff.; לבוש מלכות (Neubauer, *Aus d. Petersburger Bibliothek*), 49*a* ff.; comp. also Ibn Ezra on Num. 15, 38, 39. Nor is it likely that the Karaites have even denied the duty of reading the *Shema'*. Abu Isa Isfahani, from whom Anan borrowed several laws (comp. Poznański, *REJ.*, XLIV (1902), 178), taught, according to Ḳirḳisani (comp. Harkavy, לקורות חכתות בישראל, 9),

The reliability of the traditional account of the origin of the Sadducees and Boethusians (Abot de R. Nathan, ch. 5), rejected by Geiger (*Urschrift,* 105 ff.) as an apocryphal legend, was vindicated by Baneth in *Magazin,* IX (1882), p. 1-37; 61-95, where is also shown how far the view of Geiger—that the Sadducees did not reject Tradition but adhered to a more ancient interpretation of the Law—contradicts the explicit statements of Josephus (*Ant.* XIII, 10, 6; XVII, 1, 4) and all the Talmudic accounts about them.[31]

Before we enter into a discussion of the agreements between the Sadducees and the Karaites which serve Geiger as proofs of the relation of the latter to the former, a few words will not be amiss on the general difficulties connected with the hypothesis, which were ignored by

the duty of reading the *Shema'*, Its reading is enjoined by the later Karaites; see Hadassi, Alph. 15 (15*d*); אדרת אליהו, 59*c*; see Weiss, דור, IV, 88; L. Löw. *Ges. Schr.*, I, 50. Neither can the Am-haares be identified with the Sadducees by his non-observance of the law of Tefillin. The Sadducees accepted the literal interpretation of Deut. 6, 8 (see Weiss, I, 118; Fürst, *Geschichte d. Karäerthums,* I, 10; Graetz, III, 3, 395; comp. also Müller, *Masechet Soferim,* p. 21, note 66). The name צדוקי in Menaḥot 42*b* ספר תורה תפילין ומזוזות שכתבן צדוקי... misled Wreschner (*Samaritanische Traditionen,* Berlin 1888, intr., p. VIII) and J. A. Montgomery (The *Samaritans,*. Philadelphia 1908, 136) to believe that the Sadducees interpreted Deut. 6, 8 symbolically. צדוקי in Menaḥot (*l. c.*) is, as often in the Amoraic literature, equivalent to מין, or was, as usual, substituted therefor by the censor. The parallel passage (Gittin 45*b*) reads מין instead of צדוקי, which is also the reading of Estori ha-Parḥi, כפתר ופרח, end of ch. 5. Harkavy (ספר חמצות לענן, 142, n. 12) believes that Anan interpreted Deut. 6, 9 literally but referred וכתבתם to the עשרת הדברות a view which is held also by the Falashas (Epstein, *Eldad ha-Dani,* 174).

[31] Comp. also Wellhausen, *Die Pharisäer u. die Sadducäer,* Greifswald 1877, 73; G. Hölscher, *Der Sadduzäismus,* Leipzig 1906, pp. 9, 33 ff., 107 ff. The general nature of the Sadducees was recently thoroughly discussed by I. Halevy in his דורות הראשונים, vol. Ic, pp. 358 ff.

Geiger. Geiger believes that all the differences between the Pharisees and the Sadducees may be brought under one unifying principle, viz., the advocacy of priestly interests by the Sadducees. But if this was the distinctive mark of the Sadducees, what import could this tendency have had many centuries after the destruction of the Temple, when there was no more priestly aristocracy nor prerogative? And how could this issue sustain and keep alive Sadduceism under the appellative קראים until to-day? Nor can we comprehend how Karaism whose basic principle since the days of its first exponent Anan was חפשו באורייתא ושפיר "Search the Scripture,[82] interpret it according to your own reason, and act accordingly," ignoring tradition,—how Karaism could have descended from Sadduceism which, as Geiger himself asserts, was by its very nature conservative, adhering stringently to ancient tradition.

This Sadducean-Karaite theory of Geiger is closely connected with his hypothesis concerning the existence of an ancient Halakah related to the Sadducean and which was therefore suppressed by the later Pharisees, a view that has been accepted by many scholars. A brief discussion of this hypothesis in relation to Karaism is given here.

The Targum Pseudo-Jonathan on the Pentateuch is, as Geiger (*Urschrift*, 162 ff., 451 ff.; *N. S.*, IV, 106 ff.; V (Heb.), 112 ff.) believes, the main depository of remnants and traces of this ancient Sadducean-Samaritan-Karaite Halakah. Ps.-Jon., being a product of Palestine at a time when the more ancient Sadducean traditions had not altogether died out there—though changed to conform to the New Halakah—, still contains much which goes back to

[82] Harkavy ספר המצות לענן, 132, 176; so Sahl b. Maṣliaḥ (Pinsker, II, 33-4); comp. Poznański, *REJ.*, XLIV (1902), 180 ff.

those ante-Pharisaic traditions. As proof of this view, Geiger (*Urschrift*, 176 ff.) attempted to show that several Karaite anti-traditional laws are found among the Samaritans and in Ps.-Jon. The following are the main points of agreement which Geiger finds between the Karaite law and the Targum Pseudo-Jonathan and which he therefore believes to be survivals of the ancient halakah.

According to the traditional interpretation of Lev. 19, 24, the fruit of a tree in its fourth year is, like the "second tithe," to be consumed by the owner within the walls of Jerusalem. This is also the view of Josephus, *Ant.*, IV, 8, 19. Pseudo-Jonathan, however, translates פריו קדש הלולים לה' (Lev. 19, 24) by קודשי תושבחן קדם ה' מתפרק מן כהנא; so also on Deut. 20, 6.[23] The Samaritans and Karaites also take קדש הלולים to mean that it is to be given to the priest or redeemed by its owner. Geiger (*Urschrift*, 181-184) believes this to have been the view of the ancient Halakah. Since this interpretation agrees with the plain meaning of קדש הלולים (comp. Ibn Ezra *ad loc.*), there is no necessity to assume with Geiger that this interpretation by some [24] Karaites goes back to an ancient tradition.

[23] Comp. Epstein, *MGW.J.*, XL (1896), 142; Gronemann, *Die Jonathan'sche Pentateuch-Uebersetzung in ihrem Verhältnisse zur Halacha*, Leipzig 1879, 48. For the view of the Book of Jubilees 7, 35-7, see B. Beer, *Das Buch d. Jubiläen*, 43-44.

[24] Not all the Karaites, as Geiger (*Urschrift*, 182) thinks; see אדרת אליהו, 70*a*, and כתר תורה, Lev. 54*a*. Geiger refers to Mibḥar, *ad loc.* Aaron b. Joseph, however, contradicts himself; see Mibḥar, Num. 4*b*: ואיש את קדשיו : כנון מעשר שני ונטע רבעי והשלמים שהם לבעלים כמו ממונו ומותר הבעל בהם; comp. however, the super-commentary טירת כסף on Mibḥar, Deut. 16*a*, letter 109. The view that נטע רבעי belongs to the priest is held by Samuel al-Magrabi (M. Lorge, *Die Speisegesetze der Karäer von Samuel el-Maġrebi*, Berlin 1907, 23, end). Geiger finds this view also in p. Soṭah 8, 5; but see Pineles, דרכה של תורה, 176 ff., and Gronemann, *l. c.* For the meaning of that passage see also N. Z. Berlin, in Halevy's דורות

According to Tradition, two tithes were to be taken every year (except the sabbatical year). The "first tithe" (Num. 18, 21 ff.) and the "second tithe" (Deut. 14, 22 ff.) are to be taken in the first, second, fourth, and fifth years; the "first tithe" and the tithe for the poor (Deut. 26, 12 ff.) in the third and sixth years of every cycle of seven years. Geiger (*Urschrift*, 176 ff.) contends that the ancient Halakah required the taking of all these three tithes in the third and sixth years, as the Karaites hold.[85] He

הראשונים, III, 313-4; comp. also Poznański, ענינים שונים הנוגעים לתקופת הגאונים, 16 ff. Hadassi (Alph. 205 (18c) and 303 (112d)) also holds that the fruits of the fourth year belong to the priests. As was pointed out already by Maimonides (מאכלות אסורות 10, 18) the mistaken view of some Geonim that the fruits of the fourth year are not to be eaten—even when redeemed—during the fourth year was caused by Lev. 19, 25: ובשנה החמישית תאכלו את פריו which seems to prohibit the enjoyment of the fruits of the fourth year during that year (Tosafot Rosh ha-shanah 10*a*, *s. v.* ועירות; ר"ש to Maaser Sheni 5, 1 and Asheri, ת' ערלה, end, quote this view from Halakot Gedolot. See also She'eltot No. 10, but see Kaminka, הקרם, II, 21). This accounts also for the interpretation of verse 24 by Ps.-Jon., many Karaites, and even Ibn Ezra (*ad loc.*) to mean that the fruits of the fourth year are to be given to the priests and that the owner is to enjoy the fruits of the *fifth* year (v. 25). For the view of Geiger see also *Jüd. Zeitschrift*, II, 183; *Nachgel Schr.*, IV, 38, 107.

[85] Not all; see כתר תורה, Deut. 18*a*: ויש מבעלי מקרא אומרים שבשנה ראשונה ושנית נותן שתי מעשרות ובשלישית מוציא שלש מעשרות תוספת מעשר עני; comp. H. Olitzki, *Flavius Josephus und die Halacha*, Berlin 1885, 16-19. See also Mibbar, Deut., 12*a*; 23*b*; and מירת כסף to the last mentioned place, letters 27-28. According to Anan (Schechter, *Jewish Sectaries* II, p. 5 ll. 10-19) *two* tithes are to be taken every year. This seems to be the meaning of his words: ובארץ יש' מפרשינן [מנחו] ב' ב' מעשר חד מעשר ללוים וחד מעשר אכלין ליה מ[רואתיהו] דכ' עשר תעשר וג' ואכלת לפני יי' אלהיך ב' א' י' לשכן שמו ש[ם והאי] מעשר ישראל אכלין ליה דקא אמא ואכלת לפני יי' אלהיך והלא מע[שר ללוים] דכ' ולבני לוי אלא על תנין מעשר קאים מישום האכי אקד[ם עשר תעשר] בתרין לישאני לאפרושי תרין מעשר חד מעשר ללוים וחד מעשר [אכלין] בעלים בבית המקדש כי היכי דאמרן. A similar view is mentioned in כתר תורה on Deut., 18*a*: ויש אומרים שבשנה שלישית מה שיותר מן המעשרות ראשון

bases this opinion on Tobit 10, 7, 8 (against which see F. Rosenthal, *Vier Apokryphische Bücher*, Leipzig 1885, 117, note), Josephus *Ant.* IV, 8, 22, Sifre to Deut. 12, 17; 14, 28 (against which see Weiss, דור דור וד', I, 126, note); but mainly on Ps.-Jon. to Deut. 26, 12-13: ארום תישיצון לעשרא ית כל מעשר עללתך בשתא תליתאי דשמיטיתא ותתנון מעשרא קמאה ללויאי מעשרא תניינא הוא מעשר מסכיניא לניוריא ליתמיא ולארמלתא וייכלון בקרווך ויסבעון : ומעשר תליתאי תיסק ותיכול קדם ה' אלהך ותימר הא אפרשנן קודשיא מן ביתא ולחוד יהבנן מעשרא קמאה ללויאי מעשרא תנינא לניורי ליתמא ולארמלא הי ככל תפקידתך דפקידתני לא עברית חדא מן פקודייך ולא אנשיית. As was already pointed out by M. Olitzki (*Flavius Josephus und die Halacha*, 18, note) and Bassfreund (*MGWJ.*, XL 1896), 5 ff.), there is nothing in Ps.-Jon. to these two verses to justify the view of Geiger. What Ps.-Jon. adds to the translation of the text is entirely in agreement with tradition (Sifre, II, 109 and 302) that in the שנת הבעור all the tithes from the last three years must be removed, the first tithe given to the Levite and the "second tithe" carried to Jerusalem. (See also on the whole Pineles, דרכה של תורה, 173-6, and Gronemann, p. 161 ff.).[35]

ושני מוציאם בשער הלוי לוקח שלו והעני מן השני. Harkavy's suggestion (ס' המצות לענן, 142, note 18) that Ibn Ezra on Deut. 14, 28 meant Anan and the Karaites is thus proved erroneous; comp. also Book of Jubilees 32, 11. For a full refutation of the view of Geiger, see Bassfreund, *MGWJ.*, XL (1896), 5-8.

[35] Geiger, on the basis of his theory that R. Eliezer b. Hyrcanus and R. Ishmael represent the ancient Halakah related to Sadducean Tradition (see above), sees also in every agreement of Ps.-Jon. with the interpretation of R. Eliezer or R. Ishmael ancient laws, which were changed by the school of R. Akiba (*Urschrift*, 447, 472 ff.; *Nachg. Schriften*, IV, 106-7). It was however shown by Gronemann (119, note 2; see also 103, note; 139-140, notes; comp. also Epstein, *MGWJ.*, XL (1896), 142) that Ps.-Jon. does not always follow the interpretation of the school of R. Ishmael against that

An agreement between Pseudo-Jonathan and many Karaites, not noticed by Geiger, is their interpretation of Lev. 18, 21 ומזרעך לא תתן להעביר למלך as referring to marriage with a Gentile woman;[87] see Kirkisani 11, 23; Hadassi (Alph. 324): עוד אמר ומזרעך לא תתן להעביר למלך וגו'... פתרון שני נאמר בי אסור על אנשי הדת שלא יקחו מבנות העכ"ומ; see *ib.* Alph. 278, 313 and 364; see also בתר תורה, *ad loc.* (49*a*). This interpretation, though censured in the Mishnah (Megillah 3, 9; comp. תוספות יום טוב *ad loc.*), is given in the name of[88] תנא דבי רבי ישמעאל (Megillah 25*a*; p. Sanhedrin 9, 7, see also Sifre II, 171) and as Friedmann, *Bet Talmud*, I, 336-7 (comp. Ginzburger, *MGWJ.*, 1900, 6 ff.), points out, the Mishnah simply meant that this verse is not to be interpreted in this way in public as it adds to the text.

of R. Akiba, his acceptance of the former being mostly conditioned by their being nearer to the plain meaning of the verse; comp. also the view of D. Hoffmann, *Zur Einleitung in die halachischen Midraschim*, pp. 74-76.

[87] This verse, as Frankel (*Einfluss*, 156) remarks, gave rise to many divergent interpretations. Anan also interpreted this verse allegorically; see Harkavy, ספר המצות לענן, 207, and Schechter, *Jewish Sectaries*, II, 32. The interpretation in the Book of Jubilees 30, 7-10 of this verse as referring to one who effects a union between a Jewish woman and a Gentile and that such action is punished by death is found also among the Karaites; so Samuel al-Magrabi (Book of Precepts called אלמרשד, a unique MS. of the Hebrew translation of the אלמרשד written in 1722 by Samuel b. Solomon ha-Kohen (see Pinsker, II, 144-5; Gottlober, בקרת לתולדות הקראים, 202, note) now in the library of the Jewish Theological Seminary of America), 222*a*: ויש אומרים כי הרצון בזה המאמר כי האדם מישראל לא יבעל אחת מן הגוים בין בזנות ובין בנשואים ויתן בה בגופה... וכן מי הוציא זרעו לאומות העולם בבעולתו או בזנותו באשה מהם או בחזוק איש מהם כי יבעל באשה מבני ישראל העושה המעשה הזה הוא מחלל שם ה' וגזר על העושה זאת בהגזמה באבנים על ידו עם הארץ.

[88] Comp. Rashi, *ad loc.*; Aruk, *s. v.* ארם; S. L. Rapoport, נחלת יהודה, Krakau 1868, p. 231 ff.; Geiger, *Urschrift*, 304; *Nachg. Schriften*, IV, 106; Berliner, *Onkelos*, II, 88 ff. and literature quoted there.

The Karaites agree with Ps.-Jon. to Lev. 1, 4 and 3, 2, (against Sifra to 16, 21; Menaḥot 93*a*; Tosefta *ib.*, 10, 3; so also Philo, II, 241) that סמיכת קרבן is with the right hand only. See Mibḥar, Lev., 3*a*: בירו האחת יסמוך... וסמך ידו: הימנית ואין סמיכה בשתי ידים רק על שעיר המשתלח ואשר אמרו בעלי הקבלה [בשתי ידים] הכתוב מתגבר על קבלתם. So also Mibḥar, Lev., 27*a*, and כתר תורה on Lev. 1, 4 (3*b*, end). But see D. Hoffmann, *Zur Einleitung in die halachischen Midraschim*, Berlin 1887, p. 75, who contends that this interpretation of Ps.-Jon. (which is also favored by the פשט; see Ibn Ezra on Lev. 1, 4) goes back to the school of R. Ishmael.

Ps.-Jon. translates אשה חדשה in Deut. 24, 5, against Sifre *ad. loc.* and Soṭah 44*a*, by בתולתא חדתא. This is also the interpretation of חדשה by many Karaites. See גן עדן, 154*b*: ובאמרו אשה חדשה רומז בזה שלא נשאת עדיין... אבל אלמנה או גרושה מן הנשואין לא תקרא אשה חדשה. So also כתר תורה, *ad loc.* (27*b*). See, however, Mibḥar *ad loc.* (20*b*). Samuel al-Magrabi (MS. 95*a*) states that the Karaites are divided on the interpretation of אשה חדשה. This deviation of Ps.-Jon. and *some* of the Karaites from the talmudic interpretation of חדשה rests on the plain meaning of that word. See Ibn Ezra *ad loc.*; comp. Gronemann, *l. c.*, p. 67.

While, as we have seen, the proofs adduced by Geiger do not establish relationship between the ancient Halakah, believed by him to be contained in Pseudo-Jonathan, and the Karaite Halakah, the following consideration, not hitherto noted, arises against any attempt at connecting the Karaite law with the ancient Sadducean Halakah which is believed to be represented in Ps.Jon.:

If the deviation of Ps.-Jon. from our Halakah go back to ancient tradition related to Sadduceism, then we should expect the Karaites—a later name for Sadduceism, according to this view—to be in agreement with such deviations of Ps.-Jon. The following examination of the main halakic divergences of Ps.-Jon. from our Halakah and of the view of the Karaites on these points will show how untenable this view is.[39]

According to Tradition (Mekilta, Mishpaṭim, 1, ed. Fried., 74*b*; Arakin 18*b*; p. Ḳiddushin 59*a*; Maim. עבדים, 4. 4) the seventh year in which the Jewish male or female

[39] Ginsburger's edition of Ps.-Jon. (Berlin 1903) is followed here. Most of the differences between Ps.-Jon., and our Halakah are collected by Gronemann, *ib.* He includes, however, renderings of some passages not being aware that Ps.-Jon. followed in their interpretation the Jerushalmi. Comp. *ib.*, p. 48, in reference to Deut. 17, 5, אל שעריך, which is the interpretation of the רבנן in p. Sanhedrin 6, 1. See also Onkelos, *ad loc.*, and Ps.-Jon. on Deut. 22, 24; comp. *MGWJ.*, LII (1908), 217, note 1. This also explains Ps.-Jonathan's rendering of Lev. 11, 11 ואת נבלתם תשקצו by ויח ניבלתהון תשקצון ומן הנייתהון תתרחקון which Hoffmann (*ZfhB.*, VII, 1903, 47; comp. Reifmann, *Bet Talmud*, I, 314) considers to be anti-traditional. But see p. Shebiit 7, 1: כתוב טמאים הם [לכם] מה ת"ל וטמאים יהיו לכם אלא אחד איסור אבילה ואחד איסור הנאה the meaning of which, as is evident from what follows there, is that איסורי אבילה are not to be made objects for trade and gain (see b. Pesaḥim 23*a*). Ps.-Jon. in his ומן הנייתהון תתרחקון thus follows the Jerushalmi; comp. also the fragment of a commentary to p Shabbat published by Poznański in הקדם, II, 49 and n. 4, and Saadia Gaon on Lev. 11, 11 published by Hirschfeld in *JQR.*, XIX, 140, beginning, ויכתבון ליה סביא in Ps.-Jon. to Deut. 17, 18 (comp. Reifmann, *l. c.*, p. 348) may be a reference to p. Sanhedrin 2, 6 (20*c*; comp. Tosefta *ib.*, 4, 7; *Maim.*, מלכים 3, 1): ומניהין אותו מספרי עזרה על פי בית דין של ע"א.

Ps.-Jon. translates also Deut. 21, 7 in accordance with the *Palestinian* interpretation as referring to the murderer. See p. Soṭah 9, 6; comp. b. *ib.*, 38*b* and Rashi, *ad loc.* See also on the Halakah of Ps.-Jon. J. Reifman, *Bet Talmud*, I, 215 ff., 347 ff.; A. Büchler, *Die Priester und der Cultus*, Wien 1895, 151 ff.; D. Hoffmann, *Zur Einleitung in d. halachischen Midraschim*, 74-76; *id.*, *in ZfhB.*, VII (1903), 46-48.

slave is to be released (Ex. 21, 2; Deut. 15, 12) refers not to the Sabbath year (שנת השמטה), but to the seventh year from the commencement of their servitude.[40] Ps.-Jon., however, seems to interpret וּבַשְּׁבִעִת "the sabbatical year" (Ps.-Jon. to Ex. 21, 7; 22, 2; but see Ps.-Jon. to Ex. 21, 2 and to Deut. 15, 12). The Karaites differing among themselves on the laws of slavery agree with Tradition that ובשבעת refers to the seventh year of servitude. See משאת בנימין, 1*d*: ישראל שנמכר לא יעבוד יותר משש שנים שלמים [שנ'] שש שנים יעבד ובשבעת יצא לחפשי חנם; Samuel al-Magrabi (S. Gitelsohn, *Die Civil-Gesetze der Karäer von Samuel al-Magrabi*, Berlin 1904, 2, line 1); Afendopolo's appendix to אדרת אליהו 9*c*: עבד שנמכר בשש שנים אם ביניהם שמטה אינו יוצא כי השנים האלו מעת ביאתו על סדר לא בשנות השמטה.

Geiger holds (*Urschrift*, 190 ff.) that the ancient Halakah did not distinguish between paid and gratuitous guardians, as does Tradition (B. M. 93*a*) but made the difference in responsibility depend on the nature of the goods entrusted. It referred Ex. 22, 6-8 to things light in which case the guardian is liable only for lack of ordinary care, and verses 8-13 to things heavy for which the

[40] So also Josephus (H. Weyl, *Die jüdischen Strafgesetze bei Flavius Josephus*, Berlin 1900, 122; Olitzki, *Magazin*, XVI (1889), 78). On the view of Philo, see Ritter, 59, and Weyl, *l. c.*, note 19. The Samaritans also interpret וּבַשְּׁבִעָה as the seventh year of the *servitude* (Klumel, *Mischpatim, Ein samaritanisch-arabischer Commentar zu Ex.* XXI-XXII, 15 *von Ibrahim ibn Jakub*, Berlin 1902, p. 11). They disagree, however, with Tradition in referring Ex. 21, 2-7, to a proselyte (*l. c.*) a view which is also represented among the Karaites (Jepheth b. Ali quoted in Mibḥar, Ex. 40*a*; גן עדן, 148*d*; כתר תורה, Ex. 68*b*; אדרת אליהו (Odessa 1870), 189*d*; Samuel al-Magrabi (Gitelsohn, p. 1, 5). The Samaritans take ועבדו לעולם (v. 6) literally (Klumel, p. VII) as do also some Karaites (see אדרת אליהו, 90*a*; Samuel al-Magrabi (Gitelsohn, 5)).

guardian is responsible even if they were stolen. Ps.-Jon. taking vs. 9-11, against the talmudic interpretation (Mekilta, *ad loc.*; Baba Meṣi'a 94*b*) as referring to a gratutious guardian בלא אגר נטיר and v. 11, with the Talmud, to a paid guardian דהוה ליה עמיה אגר נטיר, represents according to Geiger (*ib.*) an intermediate state in the development of the law of guardians.[41]

All the later Karaites accept fully the traditional interpretation of Ex. 22, 6-15 as referring to four kinds of guardians, so Mibḥar, *ad loc.*, 44*b*-45*a*; כתר תורה, *ad loc.*, 75*a-b*; גן עדן, דין ארבעה שומרים, 182*b*-184*c*; Samuel al-Magrabi, MS., 136*a* ff.

Ps.-Jon. interprets Lev. 5, 1 against Tradition (Sifra *ad loc.*) interpret this verse like Tradition, as referring another person swearing falsely or breaking an oath and conceals it (comp. Reifmann, *l. c.*, 313, and Hoffman, *Leviticus*, I, 109, note).[42] The Karaites (מבחר and כתר תורה, *ad loc.*) interpret this verse like Tradition, as referring to שבועת העדות.

Geiger (*Urschrift*, 477) finds support for his view that according to the Sadducees all the work connected

[41] See RaSHbaM on v. 6; comp. Reifmann, *Bet Talmud*, I, 219. The view of Gronemann, 77 ff., is improbable, comp. *ib.*, note. For Philo's and Josephus' interpretation of these verses see Ritter, p. 61 ff., and Weyl, p. 130 ff. Hadassi (Alph. 370) refers verses 6-10 to מטלטלין and verses 10-13 to בעלי חיים. Benjamin Nehawendi seems also to make this distinction (משאת בניטין, *zb*) but contradicts himself. He says (*ib.*, 3*b*): המלוה חייב לשלם דמי העכוטות ומשתלם חובו ממנו בעבור כי הוא דומה לשומר וחייב כגנבה ואבידה, שנאמר ואם גנוב יגנב מעמו וגו', thus referring verse 11 to מטלטלין.

[42] Philo makes such reticence a *capital crime* (II, 275; Ritter, p. 47; comp. *Werke Philos*, II, 114, note 4). This interpretation of Ps.-Jon. seems to have escaped Ritter (*l. c.*).

with the Red Heifer was to be done by priests only[42] in Ps.-Jon. to Num. 19, 9. 18 ויכנוש גבר כהין דכי (comp. also Brüll, *Bet Talmud*, I, 270).

The Karaites, however, agree with Tradition in the interpretation of איש טהור (so also Philo II, 253); and Mibḥar (*ad loc.*, 18*b*) records the opinion of some Karaites that even שרפת פרה (v. 5), which according to Tradition is פסול בזר (see note 43), does not require a priest:

ויש אומרים השורף יתכן להיותו כהן או זולת כהן

Ps.-Jon. adds to יוציא מחוץ למחנה (Lev. 16, 27) the words יתפקון באסלין על ידיהון דטליא דכהניא... which is against the Halakah, as Büchler (*Die Priester und der Cultus*, 153) remarks. The Karaites agree with Tradition. See Mibḥar, *ad loc.* (28*a*):

יוציא אל מחוץ למחנה : יוציא דמוציא ולא כהן.[44]

Ps.-Jon. differs from Tradition, Yoma 6, 6, in the interpretation of ושלח את השעיר (Lev. 16, 22) in ascribing the death of the goat to non-human agency. Geiger (*N. S.*, V, Heb., 115) believes this to have been the ancient interpretation (failing, however, to indicate the reason that

[42] Comp. Brüll, *Bet Talmud*, I, 273. Geiger (*l. c.*) quotes also Ps.-Jon. on verses 3, 5, 7, but in the interpretation of v. 5, Ps.-Jon. is in full agreement with Tradition, which also requires שרפת פרה to be by a priest (Brüll, *l. c.*, 271, n. 5, notwithstanding). See Parah 4, 4; Tosefta, *ib.* 4, 6; Maim., פרה אדומה, 3, 2; 4, 17. The view that שחיטה בכהן (Ps.-Jon. on verses 3, 7) is represented also in Yoma 42*a*. As to the slaughtering of sacrifices in general if it need be by a priest, see Ritter, pp. 110-11; see also Büchler, *Die Priester und der Cultus*, 138 ff., and p. 101, n. 2, and p. 155, n. 2. See Yoma 27*a* and Zebaḥim 32*a*; see also Lev. Rabba 22, 4: תני דבי ישמעאל לפי שהיו ישראל אסורים בבשר תאוה במדבר ... והכהן שוחט ומקבל.

[44] See also Geiger, *Urschrift*, 173 (and Büchler, *l. c.*, 154) as to Ps.-Jon. Ex. 29, 37; 30, 29; against which see the just remarks of Gronemann, 48, note.

might have caused the change in the interpretation of this verse). The Karaite interpretation agrees with that of the Talmud. See Mibḥar, *ad loc.* (*27b*) ומשליכו משם..., comp. also בתר תורה, *ad loc.*

According to Tradition שלמי נדר ונדבה (Lev. 7, 16-18) are eaten only two days and the night between (Sifra *ad loc.*; Zebaḥim 5, 7; Pesaḥim 3*a*; Maimon., מעשה הקרבנות, 10, 6). It construes וממחרת והנותר (v. 16) so that יאכל refers to ממחרת. Ps.-Jon. refers יאכל to the night after the second day so that שלמים are eaten two days and two nights (comp. Ps.-Jon. to Lev. 19, 6). The Karaites are divided on this question. See Mibḥar, *ad loc.* (*11b*): ממחרת. שנאכלים לשני ימים ולילה אחד והנותר מבשר הזבח ביום השלישי באש ישרף: ביום השלישי דבק עם באש ישרף לא עם והנותר... But see כתר תורה, *ad. loc.* (*18b*): והנה שלמי נדר ונדבה נאכלים לשני ימים ושתי לילות לא שני ימים ולילה אחת... הוא הדין גם בשלמי נדר שיום המחרת תופש גם הלילה של אחריו. In a fragment of a commentary on Lev. which Schechter published in his *Saadyana*, 144 ff., the author of which Schechter believes to be the famous ninth century Karaite Daniel al Ḳumsi, the same view is held (*ib.*, p. 146):[45] כן... נדר ונדבה יאכל ממחרת ולילה שלישי..

[45] Aaron b. Elias, however, contradicts himself. See גן עדן, fol. 39*c*, l. 7 from bottom: והשלמים נאכלין לשני ימים ולילה אחת. Philo, as is evident from the third reason given by him for the law of Lev. 19, 6 (II, 245), agrees with Ps.-Jon. See also Geiger, *Nachg. Schr.*, IV, 38; Reifmann, *Bet Talmud*, I, 314. Chwolson, *Das letzte Passamahl Christi*, 35, believes this to have been the *Sadducean view*; comp. *ib.*, 32, 34. The interpretation of Ps.-Jon. seems to have escaped Chwolson. Another Karaite view is found in the fragment mentioned in the text. Daniel says that the words אדם כי יקריב מכם קרבן (Lev. 1, 2) excluded Gentiles from bringing any sacrifices to be offered for them in the Temple. Other Karaites hold the same view (Mibḥar, Lev. 39*a*, and טורת כסף, *ad loc.*, כתר תורה 62*a*; but see תמיד דעת by the Karaite

Ps.-Jon. interprets ולא ירבה לו סוסים (Deut. 17, 16) to mean that he should not have more than two horses (לחוד לא יסגון ליה על תרין סוסוון) which is against the talmudic interpretation that the King is not to keep more horses than he actually needs (Sifre, *ad loc.*, 105*b*; Sanhedrin 21*a*, comp. Brüll, *Bet Talmud*, II, 25-26). The Karaites agree with the talmudic interpetation. See Mibḥar, *ad loc.* (14*b*): ולא ירבה לו סוסים : אלא כדי מרכבתו.

Tradition interprets ומת הנביא ההוא (Deut. 18, 19) as death by strangulation (Sanhedrin 10, 1; Sifre, *ad loc.*, 108*a*). Ps.-Jon. translates death by sword.[46] The Karaites agree with Tradition. See כתר תורה, *ad loc.* (22*a*): אך הנביא אשר יזיד : זהו נביא שקר וגם יכלול מי שהוא מן מנבי דברי הישם והמתנבא בשם עבודה זרה והנה ישלשתם בחנק.[47]

As was already remarked by Jonathan Eibeschütz (אורים ותומים, 9, 2) Ps.-Jon. in his translation of Deut, 24, 1 יכתוב לה ספר תירוכין קדם בי דינא requires the presence of a court for the execution of a bill of divorce. The Karaites agree with Tradition (see Baba Batra 174*b*; Arakin 23*a*: אטו כל דמנרש בבי דינא קא מנרש; but comp. פירוש ר' נרשום, *ad loc.*; see the literature in L. Löw, *Ges. Schr.*, III, 235-244) against Ps.-Jon. Anan requires the presence of ten, which constitutes a court according to the early Karaites (see *REJ.*, XLV, 67; 69 note) in case of marriage (סה"מ לענ ed. Harkavy, p. 113) but not for a divorce (*l. c.*, p. 119). See also Benjamin Nahawendi,

M. Sultanski, Goslow 1858, 118). The later Samaritans shared this view (Wreschner, 61-2). This Karaite law is based on no tradition; see Schürer, Division II, Vol. I (Engl. transl.), 299 ff.

[46] Ps.-Jon. interprets יומת in Deut. 13, 6 also by יתקטל בסייפא, which is against the Mishnah, Sanhedrin 10, 1.

[47] Aaron b. Joseph (Mibḥar, Deut. 15*a*) believes that death here is בידי שמים, basing his view on Jerem. 28, 16.

משאת בנימין, 6*c*, ll. 9-12, and נן עדן, 155*b*. Elias Bashjatzi (אדרת אליהו, ע נשים, פ׳ י״ב) states: ולכן התקינו בתי דינים שינתן [הגט] בב״ד כדי שיהיה הדבר מפורסם

It is, however, most probable that in many instances a writ of divorce would be given in the presence of a בית דין to insure legality and publicity, to which custom Ps.-Jonathan's קדם בי דינא may be due. In a recently discovered Assuan papyrus a divorce is said to be announced בעדה. See *Jahrbuch d. jüdisch-literarischen Gesellschaft*, VII, Frankfurt a-M. 1910, p. 378.

Ps.-Jon. (so also Fragment Targum) interprets ובאת אל הכהן אשר יהיה בימים ההם (Deut. 26, 3) against Tradition (Bikkurim 3, 12; Sifre, *ad loc.*; so also Josephus, IV, 8, 22) as referring to the high priest (תעלון לות כהנא די יהוי ממני לכהן רב). The Karaites agree with Tradition. See Mibḥar, *ad loc.*, 23*a*. So also כתר תורה,[48] *ad loc.* 29*b*).

[48] The Karaites, relying on Nehem. 10, 36, contend that the firstlings (בכורים) are to be offered from all kinds of earth and tree fruits (Mibḥar and כתר תורה, *l. c.*). According to Tradition (Bikkurim, 1, 3) they are offered only from the "seven kinds" enumerated in Deut. 8, 8. Philo, II, 298 states that they are brought from the fruits of trees (see *Werkes Philos*, II, 168, n. 2; but see Philo, II, 391); comp. also Book of Jubilees 21, 10 and Josephus *Ant.* IV, 8, 22.

I will now turn to the differences known or supposed to have existed between the Sadducees and the Pharisees and examine Karaite halakah on these disputed points.

The interpretation of Lev. 16, 12-14 constituted one of the earliest differences between the Pharisees and the Sadducees. The Sadducean view and practice was (Tosefta Yoma 1, 7) that the kindling of incense in the vessel (v. 13) was to take place before the high-priest entered the Holy of Holies, maintaining that otherwise the high-priest when entering it would see the Ark,—which contravenes כי בענן אראה על הכפרת (v. 2)."[48] The Pharisaic ruling and practice was that the incense is to be put on the coals in the Holy of Holies itself (T. K. Aḥare Mot. 3; Tosefta Yoma 1, 7; Yoma 19*b*; 53*a*; p. *ib.*, 1, 5 (39*a*)). The Karaites agree with the Pharisaic interpretation of these verses. See Mibḥar, *ad loc.* (27*a*): ונתן את וגו׳ : אחר הכנסו מיד שלא יראה הכפרת; so also כתר תורה, *ad loc.* (42*b*): כנראה שקטורת מכניסה על ידי כלי אחר ובהכנסו נותנה על המחתה.

The authenticity of Megillat Taanit (ed. Neubauer, ch. 4), according to which the interpretation of וירקה

*Continued from New Series, vol. II, 517 ff.

[48] See כתר תורה, Lev. 41*b*, for the anti-Sudducean interpretation of this verse: ואין המעם שלא אראה רק בענן הקטורת. Comp. Geiger, *Jüd. Zeitschrift*, II, 29 ff., and Oppenheim, *Bet Talmud* IV, 269 ff.

בפניו (Deut. 25, 9) constituted a difference between the Pharisees and the Sadducees, is admitted by Geiger (*Jüdische Zeitschrift*, II, 28; comp. *ib.*, 95). The latter in their adherence to the letter of the Law required the יבמה to spit in his face (ממש) while the Pharisees in case of *ḥaliṣah* caused her to spit before him (Yebamot 106*b*). The Karaites agree with the Pharisees in the interpretation of וירקה בפניו.[80] See Mibḥar, *ad loc.* (22*a*) וירקה בפניו בארץ כנגד היבם וי"ל בפני הנעל. Comp. טירת כסף, *ad loc.*

The responsibility of a master for damage caused to others by his servants constituted, as already recorded in Mishnah (Yadaim 4, 7), an issue between the Pharisees and Sadducees. The latter applied the law of Ex. 21, 35 also to damage done by one's servants. The Karaites agree with the Pharisees and reason like them. See נן עדן (180*c*): נזקי עבד ואשת איש אשר הזיקום אחרים משלמין אבל הם פטורים .... אבל במה שיש תשלומין אינו דין שיפרע הבעל או האדון ... ואין להקיש נזקי העבד בנזקי השור כי העבד יש לו דעת ואפשר שירע לבבו מאדוניו ויפסיד ממון אחרים וימצא משלם; comp. G. Hölscher, *Der Sadduzäismus* (Leipzig 1906), 30 ff.; Geiger, *Urschrift*, 143 ff.

The Pharisees and the Sadducees differed on the law of inheritance. According to Num. 27, 8 when there are sons and daughters, the sons are the heirs. But if the son died before his father, the son leaving a daughter, the Sadducees held that the daughter shares with her brother's daughter the inheritance. The Pharisees held that the son and all his descendants, male or female, should precede the daughter in the right of inheritance (Meg. Taanit 5,

[80] See Rapoport, דברי שלום ואמת (Prag. 1861), 11 ff.; Weiss, I, 117, note 2. Josephus (*Ant.* IV, 8, 23) translates with the Sadducees בפניו literally. See, however, Anan (Harkavy, 116): וירקא באפיה. Comp. also *Testament of Twelve Patriarchs*, Zebulun, 3, 4, ff.

(Neubauer, II, 10); Tosefta Yadaim 2, 20; Baba Batra 115*b*-116*a*; p. *ib.*, 8, 1).[51]

The Karaite law of inheritance, as they themselves confess (גן עדן, 165*b*), is confused, and difference of opinion exists among them on essential points. The prominent ninth century Karaite, Daniel al Ḳumsi, held that the daughter when sons are left receives a third of the inheritance (Pinsker, II, 85; comp. אדרת אליהו, 101*a*).[52] Joseph b. Abraham ha-Kohen was of the opinion that the daughter's right to inheritance is equal to the son's (*ib.*, 101*c*; גן עדן 165*d*); this, he reports in the name of David b. Boaz, was also the view of many others.[53] These views disagree with

[51] See V. Aptowitzer, *Die syrischen Rechtsbücher und das Mosaisch-Talmudische Recht*, Wien 1909, 82. His assertion that the law of Timotheos quoted there is Sadducean is mistaken. The equal rights of a daughter's son and another daughter's daughter never constituted an issue between the Pharisees and the Sadducees.

[52] Wreschner, 41, suggests that it was taken by some of the Karaites from the Samaritans, who follow the Mohammedan law and give the daughter, when there is a son, a third of the inheritance. The Karaite law: ממון כל שאין לו קרוב וגואל הוא לכהן הגדול המשרת המקדש (Benjamin Nahawendi, משאת בניימין, *zd*; so also Hadassi, Alph. 369) might have also been borrowed from the Samaritans (see Wreschner, 42). For a similar view, see Schechter, *Jewish Sectaries*, I, p. 9, lines 14-15. Tradition makes no provision for the case of a man dying without heirs and considers it impossible (Sifre to Num. 5, 8; Baba ḳamma 109*a*). According to Philo (II, 291) the tribe inherits his property.

[53] An opinion identical with that of Joseph b. Abraham is quoted in p. Baba batra 8, 1 in the name of חכמי גוים. Aaron b. Elias (גן עדן, 166*a*) states that by "many others" David b. Boaz meant the *Sadducees* and reads in Baba batra 115*b* כל האומר תירש בת עם הבן אפילו נשיא בישראל אין שומעין לו instead of כל האומר תירש בת עם בת הבן; see also the reading in Neubauer's edition of Megillat Taanit (*l. c.*); comp. Hoffmann, *ZfhB.*, IX (1905), 135. For the view of Anan on ירושת הבת, see Hadassi, Alph. 256 (98*b*); comp. Grätz, *Geschichte*, V[4], 187; D. H. Müller, *Syrisch-römische Rechtbsücher u. Hamurabi*, 31.

The opinion of Wreschner, 39, that חכמי גוים refers to the Samaritans

the Sadducean as well as with the Pharisaic practice. Those Karaites who do accept the traditional view that daughters do not share with sons in inheritance,—and this is the view of nearly all later Karaites (Hadassi, Alph. 252, 256; גן עדן, 166*a*, and מבחר and כתר תורה to Num. 27, 8)—agree also with the *Pharisees* against the Sadducees, that the son's children, female as well as male, are the sole heirs even when the deceased has left daughters. See Hadassi, Alph. 252 and 256: ואמר ובן אין לו והעברתם את נחלתו לבתו בתורתך: "פתרונו בן קודם לבת וכל יוצאי ירכו של בן קודמים לבת; so also אדרת אליהו 102*d*: ולפי זה בת הבן קודמת מן הבת ...; so also כתר תורה, Num. 41*b*: ופרחי הבן, בין זכר ובין נקבה ... קודמין מן הבת.

Hadassi (Alph. 97) informs us that the Sadducees "absolutely forbade divorce." Geiger (*Zeitschrift*, 1836 p. 99) doubted the authenticity of this report. Ḳirḳisani reports it in the name of David b. Merwan Almukameṣ (ed. Harkavy, 304, l. 3; 305, l. 12). S. Holdheim in his מאמר האישות (Berlin 1861, p. 43 ff.) finds support for this assertion in the fact that the Karaites, who, as he believes with Geiger, descend from Sadducees, also prohibit divorce except in case of suspicion of adultery in the wife, and quotes (p. 53, note) אדרת אליהו. Holdheim, however, misstated the facts. The author of אדרת אליהו (96*c*) as well as all the other later Karaites (Hadassi, Alph. 366 (141*c*); מבחר and כתר תורה on Deut. 24, 1; Gan Eden 154*d* and לבוש מלכות (A. Neubauer, *Aus d. Petersburger Bibliothek*, 54)), does not like the School of Shammai (Gittin 90*a*) take ערות דבר (Deut. 24, 1) to mean sexual immorality, but an

is forced. He and Aptowitzer (*JQR.*, XIX, 609) overlooked Shabbat 116*b*. For the expression אפילו נשיא בישראל, see החלוץ, VIII, 78; נשיא בישראל may also refer to R. Gamaliel II who was the supposed litigant (Shabbat 116*b*).

"intolerable thing" as, for instance, the wife's becoming (after the marriage) deaf or blind or contracting an incurable disease; anything of such a nature is legitimate cause for divorce. But even this view was rather an innovation of later Karaites. As we now know, according to Anan, marriage may be dissolved at the wish of either of the parties, by a writ of divorce. See his ספר המצות (Harkavy, 119): וקא אמא יהיה אם לא תמצא חן בעיניו כי מצא בה ערות דבר דאי לא שפרא בעיניה דאשבח בה מילי סניחא ולא ניחא ליה בנוה מנרייש לה בין דלא צבי בה הוא ובין דלא צביא בית היא.[54]

Benjamin Nahawendi (משאת בנימין, 5*b*), considered the right of divorce to be vested in the husband alone. Samuel al Magrebi tells us of the following three opinions among the Karaites as to the husband's right of divorce. He says (MS. 97*b*): רע כי התחלפו כי מצא בה ערות דבר חחכמים בזה הדבר מהם מי אמר כי ישוב להדת ועינינו לא תמצא ח בעיניו ראשר מצא בה כי היא מקלה במצות .... ומהם אמר כי זה המאמר יבלול כל אשר ימצא האיש באשתו מאשר ימנע האיש כי תמצא האשה חן בעיניו ואין הבדל אם יהיה המום מפני דרכי הדת אם מפני דרכי העולם מפני היצירה או הצורה ומהם מי לא ישים זה המאמר תנאי בנרוש כי בדעתם מאז יאמר אני שנאתי [את אשתי] יאמר לו תן לה המוהר המאוחר שלה ותנרשנה וגם ראיתי את אנשי זמני דורכים בזה הנתיב.

[54] See Harkavy in Grätz, *Geschichte*, V[4], 487. This view of Anan seems to have escaped Poznański, *ZfhB.*, XI (1907), 72. It is possible that Anan in this law raised to the dignity of a biblical law the תקנת מורדת enacted about a century before Anan. See Sherira Gaon, *Epistle*, ed. Neubauer, 35, l. 11; *id.*, תמרה גנוזה, Resp. 140; comp. Grätz, V[4], 129-130; Weiss, *Dor*, IV, 5, 9, 37; A. Schwarz, *Moses b. Maimon*, Leipzig 1908, 342-345. Hadassi (Alph. 335) stands alone in his opinion that מום לאחר קדושין is not sufficient cause for divorce. For the Samaritan interpretation of ערות דבר comp. *MGWJ.*, LIV (1910), 433; Philo and Josephus agree with the view of Beth Hillel (Ritter, 70, n. 1).

The practice of the Karaites of his day thus coincided with the opinion of R. Akiba[85] (Gittin 90*a*): אפילו מצא אחרת נאה הימנה.

The preparation of the Red Heifer was, according to Num. 19, 9, to be done by one ceremonially clean: ואסף איש טהור. The interpretation of איש טהור constituted one of the essential differences between the Pharisees and Sadducees. The Pharisees considered the unclean man who has bathed in the day time, and awaits sunset, in accordance with Lev. 22, 7, to be טהור and eligible to prepare the ashes of the Red Heifer. The Sadducees considered him unclean

[85] Still more erroneous is the assertion of Holdheim (*l. c.*, 57 ff.), that the Karaites considering the marital bond similar to that of God and Israel allow the husband to forgive and take back an adulterous wife, while Tradition demands the dissolution of the marriage by a writ of divorce. *The reverse is true.* According to the Karaite law, even the אנוסה is considered defiled and forbidden to her husband whereas the talmudic law requires divorce only in case the husband be a priest (Ketubbot 51*b*; the reason of the opinion of אבוה דשמואל (*l. c.*) is ישמא בועל ברצון; for Ps.-Jon. on Deut. 22, 26: אלא גברא יפשירינה מוניה בניסא, see Chayes, אמרי בינה, 9; comp. also שערי צדק, IV, 4, 4). See Benjamin Nahawendi (מטאת בנימין 5*a*): ואם אשת איש היא ואנוסה רינה כמו של מאורשה אבל על בעלה אסורה; שני משביולי נ"ע אמרו בין אנוסה; אחרי אשר הוטמאה; so also Hadassi, Alph. 329: בין מזותה אסורה על בעלה; comp. also Alph. 364 (135*b*); גן עדן 152*b*; 155*a*; אדרת אליהו, 93*b*; לבוש מלכות, 47. Jepheth b. Ali held that in case of defilement no writ of divorce is necessary; for the marriage is *ipso facto* dissolved (גן עדן, 155*a*); but see Hadassi, Alph. 5, lett. ק. Holdheim (*l. c.*, 112) contends that the *Sadducees* did not consider a captive (שבויה) even when אשת כהן defiled. Yet the *Karaites* hold that even an אשת ישראל שבויה is forbidden to her husband. See Hadassi, Alph. 365 (141*d*). Josephus (*Contra Apionem* I, 7) agrees with Tradition (Ketubbot 27*a*). Holdheim (*l. c.*, 53, note) states that while the Karaites consider man and woman equal in their spiritual duties, the Mishnah (Berakot 3, 2) confines the duty of prayer to man. The *very* Mishnah which he quotes states that women *are* included in the obligation of prayer.

and barred him from assisting in the preparation of it.[66] This issue could have arisen only if we interpret והיה לפנות ערב ירחץ במים in Deut. 23, 12 to mean "from the time that the sun begins to decline" allowing the unclean to take the ablution after midday,[67] a period thus intervening between the purification bath and sunset, during which he was considered by the Pharisees clean and suitable to prepare the אפר פרה.

Most of the Karaites, however, take לפנות ערב to mean the last part of the day and assign the ablution to the hour which immediately precedes sunset, see Harkavy, ספר המצות לענן, 143, n. 9; see also בתר תורה, *ad loc.* (*27a*): והיה לפנות ערב: סמוך לערב וכן לפנות בקר לא כדעת בעלי הקבלה שהטעם מעת שיפנה חערב יהיה ראוי לרחוץ כל היום וזה טבול יום. See *ib.*, Lev. 39*b*; Hadassi, Alph. 295 (110*c*). So also אדרת אליהו, 71*d*: ובטהרת המים אמרו החכמים כי צריך להיות סמוך לערב באשר כתוב בבעל קרי והיה לפנות ערב ירחץ במים ... וביארו החכמים שפנות ערב סמוך לערב ... לכן פסקו שטהרת הטמאים כולם במים צריך להיות סמוך לערב. .... So also Samuel al Magrabi (MS., 191*b* ff.): ועת פנות ערב התחלפו החכמים בו ... ואמר זולתם כי הוא בקרוב הערב והוא בשיעור שיתרחץ הטמא ויצא וישאר מעט מהשמש על ראשי ההרים כמאמר הכתוב וטמא עד הערב אחר מאמרו ורחץ במים. Comp. also the anti-Karaite ordinance of Maimonides (ed. Friedlaender, *MGWJ.*, 1909, 476): ומנהם מן תתואכי בהדא אלסבב אן יכון בין השמשות בחסב אעתקאד אלמינים; see also גן עדן 110*b*, *c*, *d*; 115 *c*, *d*; comp. also Sahl b. Maṣliaḥ, Pinsker, II, 28. According to them, such state of uncleanness as

[66] Parah 3, 7; Tosefta, *ib.*, 3, 8; Yoma *2a* and parallels; comp. Grätz, III[4], 447 ff. G. Hölscher, *Der Sadduzäismus*, Leipzig 1906, 20-21 wholly misunderstood this controversy.

[67] Comp. Geiger, *ZDMG.*, XX, 567; Maim., ה' מקואות, 1, 6, and ראב"ד and כ"מ *ad loc.*

טבול יום—one who has bathed (for purification) in the *day time*—does not exist at all; the Karaites thus differ in the question of טבול יום as much from the Sadducees as they do from the Pharisees.

The law of false witnesses constituted one of the earliest differences between the Pharisees and the Sadducees. The latter restricted the application of Deut. 19. 19 to the case when the accused has already been executed in consequence of their false testimony. The Pharisaic view and practice were that false witnesses are liable to equal punishment after the judgment had been passed but not carried out (Sifre, *ad loc.*, ed. Friedmann, 100*b*; Makkot, 1. 6; Tosefta Sanhedrin 6. 6; p. *ib.*, 6. 3 and parallels).

Geiger (*Urschrift*, 140) and Weiss (I, 138) consider apocryphal the report of the Baraita Makkot 5*b* that the Pharisees did not apply the law of false witnesses in case the wrongly accused was already executed. The issue between the Pharisees and Sadducees was, according to them, the case where the testimony was found to be false *before* the execution of the alleged offender.[89]

Most of the Karaite exegetes and codifiers agree with the Pharisees in this disputed point; see Mibḥar, *ad loc.* (15*b*): ואימתי יעשה לו כאשר זמם: אחר שינמר הדין; comp. טירת כסף,

[89] Comp. also Pineles, דרכה של תורה, 172; Friedmann, *Beth Talmud*, V, 233 ff.; Herzfeld, *Geschichte*, III, 387; Graetz, III², 99. The Book of Susannah was according to Brüll, *Jahrbücher*, III (1877), 63 ff. (comp. also Hoffmann, *Magazin*, IV (1877), 157 ff.) written as a protest against this Sadducean practice. For the view of Philo see Ritter, 26, n. 1. Josephus accepts the Pharisaic view (Weyl, 85). For the Samaritans see Wreschner, Intro., p. VIII, note 5. For attempts to explain the talmudic view תרגו אין נהרגים (see Geiger, *Urschrift*, 140, note), which is also the view of the Karaite Aaron b. Joseph (Mibḥar, Deut. 16*a*) see *Magazin*, XX (1893), 88 ff.; Rapoport, דברי שלום ואמת, p. 7. L. Löw, *Ges. Sch.*, I, 284, is to be corrected accordingly.

... ואף על פי שבעדות הזוממים לא נהרג המועד: *ad loc.* (let. 95)
וכן אמרו: יקבלו הענש מיד ב"ד כאשר זממו לעשות; comp. גן עדן, 194*d*
בעלי הגמרא אין העדים הזוממין נהרגין אלא אחר שנגמר הדין:
לא הרג נהרגין הרגו אין נהרגין וחכמי הקראין אומרים לא כל שכן והם אומרים
.... אין רגין לבא מן הדין; comp. also Hadassi, Alph. 357, and
וצריך שאם היה אמת יהרג הוא ..... כתר תורה, Deut. *26a*, l. 1;
see, however, גן עדן 177*c*: ... ואם לא נהרג אינם חייבים ואפילו
שנפסק דינו ועדין לא נהרג.

The two daily burnt offerings (עולת תמיד) being pubic offerings, had to be provided at the expense of the public, from the תרומת הלשכה of the half-shekel tax (Shekalim 4, 1; Sifre I, 142).[89] The Sadducees claimed (basing it on the singular form את הכבש אחד תעשה in Num. 28, 4) that the daily burnt offerings may be offered by individuals. Menahot 65*a* and Megillat Taanit, 11 (Neubauer, *Mediaeval Jewish Chronicles*, II. 3): שהיו צדוקים אומרים מביאים תמידים
משל יחיד זה מביא שבת אחד וזה מביא שתי שבתות וזה מביא שלשים יום;
comp. Geiger, *Urschrift*, 136.

The Karaites, in agreement with the Pharisees, consider the perpetual offering a public sacrifice to be offered at the expense of the people, though they hold that, in all duties incumbent on the people at large, if an individual anticipates it, the duty is discharged. See Mibhar to Ex.

[89] So also Josephus, *Ant.* III, 10, 1 and *Contra Ap.*, II, 6. Philo also considers the קרבן תמיד a public sacrifice (II, 239). Comp. M. Zipser, *Flavius Josephus' "Ueber das hohe Alter des Jüdischen Volkes gegen Apion,"* Wien 1871, 113. The fact that King Hezekiah defrayed the expense of the תמיד (II Chron. 31, 3; comp. Schürer, II, I, 284, Engl. transl.) is not against this view, as even according to Tradition an individual is allowed to bring the תמיד, if he first turns it over to the people (Rosh hashanah *7a*); see Maim., כלי המקדש, 8, 7: אף כל קרבנות הציבור שהתנדב אותן יחיד משלו
כשרים ובלבד שימסרם לציבור, comp. משנה למלך, *ad loc.* and ר"ש to Parah 2, 3.
This escaped Ratner, ספר היובל in honor of N. Sokolow, Warsaw 1904, 502.

27, 20 (57*a*): וזו המצוה אם קדם אחד לעשותה נפטרו כל ישראל. Similarly וכן התמידים והמלח ועצי העולה והנסכים ומצות רבות כך to Num. 19, 2; comp. טירת כסף, *ad loc.*: אף על פי שהויא ... מתחייבת להעשות ממון של צבור יספיק בהבאתה על ידי איש אחד ויהיו פטורים כל ישראל כי יצאו ידי חובתם; see also בתר תורה, Ex. 95*b*, and ארורת אליהו, 101*b*.

The view of Geiger (*Jüdische Zeitschrift*, I, 24; *Nachgelassene Schr.*, V, Heb., 161; *ZDMG.*, XX, 560 and elsewhere; comp. Poznański, *REJ.*, XLV, 63) that the Samaritan interpretation of Deut. 25, 5 ff., which was also held by some early Karaites, goes back to the Sadducees, cannot be accepted. The Samaritans took החוצה (v. 5) to be an adjective, referring to אשת המת translating it "the outer wife," i. e. the betrothed who had not as yet entered her husband's house, and restricted the law of levirate marriage to the betrothed woman whose husband died without living issue (Kiddushin 75*b*-76*a*; p. Yebamot 1, 6 and Gittin 1, 4; comp. Frankel, *Vorstudien*, 197, note *b*). If the Sadducees, like the Samaritans, would have applied the law of *yibbum* only to the betrothed, but not to the widowed wife, marriage would have been prohibited with them, as the cause of the exclusion of the Samaritans from the Jewish community and of marriage being prohibited with them, was that they referred the law of levirate marriage to the betrothed only. See Kiddushin 75*b*.[80]

An agreement of great importance, as Geiger thinks, between the Sadducees and the Karaites is their rejection of the device known as *'erub*, by which restraint on walk-

[80] Against this view of Geiger see also L. Löw, *Gesammelte Schriften*, III, 162; Geiger's opinion (*Urschrift*, 148) that many of the Pharisees were against intermarriage with Sadducees is not proved; see, to the contrary, N. Krochmal, מורה נבוכי הזמן, Warsaw 1894, 65; L. Löw, *l. c.*, 160. קבוצת מאמרי גייגער ed. Poznanski I, 87, n. 3, end and 84, n. 1.

ing and carrying on the sabbath is lightened.[61] Geiger sees in the institution of *'erub* a result of the Pharisaic desire to imitate the priestly sacerdotal meals eaten in חבורות. The sacrificial meals constituted a religious act. To afford the priests an opportunity to assemble for such repasts, which were usually held on holidays and sabbath, the regulations concerning walking distances and carrying food from one precinct to another (מרשות לרשות) were disregarded. The Pharisees also instituted common repasts (originally of companies of ten peoople, as in the eating of the Paschal Lamb). These meals, though of profane food, חולין, were eaten על טהרת הקדש and in connection with them were practised rites and observances usually associated with sacerdotal meals. To facilitate such gatherings, i. e. participation by those who lived outside the city limits in such consecrated meals (usually held on holy days), they devised the fiction of *'erub*, through which members could come from distances and food be carried from one precinct to another on sabbath. The Sadducees opposed this device (Erubin 6, 2; *ib.*, 68*b*). The rejection of this "evasion law" by the Samaritans (Erubin 31*b*) and the Karaites (Hadassi, Alphabeta 182, 183, 242, see also authors quoted below) thus goes back to their common source—the Sadducees. This hypothesis of Geiger is due to misunderstanding the above quoted Mishnah. As has been shown by I. Halevy in his *Dorot Ha Rishonim* (1*c*, pp. 436 ff.; so also Weiss, *Dor*, I, 119),[62] the Sadducees are mentioned there as מי שאינו מורה

[61] *Jüd. Zeitschr.*, II, 24, *Nachg. Schriften*, III, 290; V, Heb., 145 ff. and elsewhere. Against the view of Geiger concerning חבורות of ten people to which he ascribes much importance (see references above and *Urschrift*, 121 ff.; *Nachg. Schr.*, IV, 107), see A. Büchler, *Der Galiläische Amhaareṣ*, 208, n. 2; comp. also, for Ps.-Jon. on Exod. 12, 4, Frankel, *MGWJ.*, 1846, 114.

[62] לא היו מודים [הצדוקים] בעירוב והכחישו איסור הוצאה בשבת (עירובין פ"ו מ"א). Weiss overlooked, however, Horayot 4*a*; comp. also Geiger himself,

בעירוב, which means "one who does not believe in the device of *'erub*," i. e. one who ignores as invalid the rabbinic injunctions against יציאה חוץ לתחום and הוצאה בחצר on sabbath. Thus, while the Sadducees did not consider יציאה and הוצאה forbidden, the Karaites prohibit them and reject the "evasion law" of *'erub* (Hadassi, *l. c.*, and authors quoted below). The early Karaites Anan,[83] Benjamin Nahawendi (גן עדן, 31*a* ff.) and Sahl b. Maṣliaḥ (*l. c. and* אדרת אליהו, 29*c*) interpreting Ex. 16, 29*b* שבו איש תחתיו literally, forbade[84] leaving the house on sabbath save for physical needs

Urschrift, 147-8; *Nachg. Schr.*, V, Heb., 147, ll. 5 ff. This is also the meaning of מי שאינו מודה בעירוב in Erubin 31*b* (concerning the Samaritans). See Niddah 57*a* and Rashi, *ad loc.*, *s. v.* לאחויי; see also Wreschner, 15; comp. S. Hanover, *Das Festgesetz d. Samaritaner nach Ibrahim ibn Jakûb*, Berlin 1904, 21. For the Sadducees, comp. also Schürer, Div. II, vol. II (Engl. transl.), 37, n. 102.

[83] See גן עדן, 31*b*; אדרת אליהו, 29*c*; comp. also Harkavy, ס"תמ לענן, 129, n. 1; 139, n. 3. This is also the view of Hadassi; see Alph. 144 (54*c*) and 247 (94*d*). Some Karaites forbade, like the later Samaritans (Wreschner, 15), leaving the house on sabbath even for physical need or a religious object; see Hadassi, Alph. 144. See also Reifmann, *Beth Talmud*, I, 385; Harkavy, *Magazin*, VI (1879), 121.

[84] The later Karaites, including Levi b. Jepheth ha-Levi, Joshua b. Judah, Samuel al Magrabi, and Aaron b. Elias, accepted the rabbinic (see Mekilta to Exod. 16, 29; Alfasi and Asheri to Erubin 1, end; Tosafot *ib.*, 17*b*, *s. v.* לאו; Maim., שבת, 27, 1) restriction of the sabbath way to two thousand yards outside the city limits, תחום שבת, making thereof a biblical ordinance. See also Joseph al Baṣer, Pinsker, II, 87.

It may also be pointed out here that *only* R. Akiba, the champion of the New Halakah according to Geiger (*Urschrift*, 153 ff. and elsewhere), is of the opinion that the restriction of אלפים אמה is biblical (Soṭah 5, 3)! See also Schechter, *Jewish Sectaries*, I, p. 10, l. 21; p. 11, l. 6.

It was also R. Akiba, the antagonist of the Sadducean-*Samaritan* halakah according to Geiger, who held the Samaritans to be genuine converts, גרי אמת (Ḳiddushin 75*b*; comp. Frankel, *Einfluss*, 245), while R. Eliezer and R. Ishmael who, according to this view, partly adhered to the Sadducean-Samaritan halakah, held the Samaritans to be only lion-converts, גרי אריות; see Ḳiddushin, *l. c.*; Shebiit 8, 10; p. *ib.*, and בני משה *ad loc.*

or some religious object."

Geiger (*Jüd. Zeitschr.*, II (1863), 43 ff.) holds that the Sadducees prohibited the sacrifice of the Paschal Lamb (קרבן פסח) on sabbath. Derenbourg (*Orientalia*, I, 184 ff.), Holdheim (מאמר האישות, 160 ff.), Chwolson (*Das letzte Passamahl Christi*, Leipzig 1908, 28 ff., 140, 161; comp. Bacher, *JQR.*, VI, 680 ff. and *REJ.*, XLV, 176 ff.) claim that the similar view held by Anan and *some* other early Karaites goes back to the Sadducees. See against this view A. Schwarz, *Die Controversen der Schammaiten und Hilleliten*, I, Wien 1893, p. 17, note. It may also be pointed out that it is hardly probable that the Sadducees distinguished, as Geiger (*l. c.*) and Chwolson (*l. c.*, 21; 29, n. 2; 43, 140) claim, between the "perpetual offering" (קרבן תמיד) as a *public* offering (קרבן צבור), and the קרבן פסח as a *private* offering (קרבן יחיד), since, according to the Sadducees themselves, the קרבן תמיד was also to be offered by an individual. See Menaḥot 65*a*; comp. Geiger, *Urschrift* 136, and above. Moreover, many early Karaite authorities agree with Tradition that the קרבן פסח takes precedence over the sabbath. So Benjamin Nahawendi (סה"מ לענן, 153; comp. also the views of Daniel al Ḳumsi and Jepheth b. Ali, Harkavy, *l. c.*). So also Aaron b. Joseph (Mibḥar, Exod. 16*b*); Samuel al Magrabi (ed.

[a] The Karaites differ among themselves also on the source of אסור הוצאה on sabbath. Jepheth b. Ali (Pinsker, II, 21) and Joseph al Baṣir (אדרת אליהו, 29*d* ff.) follow Tradition and consider it to be a מלאכה and therefore forbidden. Ḳirḳisani thinks that carrying is not מלאכה and its prohibition is *traditional* and attested by Jerem. 17, 22 (גן עדן, 26*b*; comp. also the views of Joshua b. Judah and of Aaron b. Elias, גן עדן, *l. c.*). Levi b. Jepheth stands alone in his opinion that the carrying of light things is not forbidden (אדרת אליהו, 29*c*).

Junowicz, *Fast-und Festgesetze d. Karäer*, Berlin 1904, 6); Elias Bashyazi (אדרת אליהו, ע' פסח, ch. 8).

Geiger (*Nachgel. Schriften*, III, 315; V. Heb., 149 ff.; *ZDMG.*, XVI, 717 ff.; comp. Cohn, *ZDMG.*, XLVII, 678) holds that the Karaite view that עור נבלה, like בשר נבלה, communicates uncleanness goes back to Sadducean Tradition. It escaped Geiger that the *earliest* Karaites, the Ananites, were of the opinion that no separate part of the carcass is capable of communicating uncleanness. See אדרת אליהו, ע' טומאה, beg.: אמנם החכמים נחלקו על שיעור הנבלה מהם אמרו והם הרעננים שנבלה בכלל תאמר על כלל הגוף המת אמנם חלקי המת לא יקרא נבלה .... והנה לפי דעתם אם יכרת אבר אחד מהבהמה לא תקרא נבלה. So also נן עדן, 99*b*, end; comp. also *JQR.*, XIX, 151, l. 11; for Anan's opinion see also Jacob b. Reuben (Pinsker, II, 84); Harkavy, לענן כה"מ 59; 153, n. 12; Schechter, *Jewish Sectaries*, II, 23; comp. also *REJ.*, XLV, 56, n. 4. See also Geiger, *Urschrift*, 135, that the Boethusians allowed ספרים תפילין ומזוזות to be written on עור בהמה טמאה which proves their agreement with Tradition that עור נבלה is not מטמא. Geiger's interpretation of Shabbat 108*a* (*N. S.*, V. Heb., 151) is forced; comp. also Schorr, החלוץ, IV, 33.

The view of Geiger (*Jüd. Zeitschr*, I, 51; II, 27; *N. S.*, III, 316; V. Heb., 138 ff.; 163 ff.) that the Samaritan and Karaite interpretation of Lev. 12, 4, 5 (ימי טהרה) goes back to the Sadducees is not proved. See Wreschner, *l. c.*, 38, in favor of whose view it may be pointed out that the *Book of Jubilees* (3, 13) seems to agree with Tradition that a woman during ימי טהרה is excluded only from ביאת מקדש and אכילת קדשים; see also Schwarz, *l. c.*, 94 ff.

The only view common to the Boethusians (a latter-day Sadducceism) and the Karaites is the interpretation of

ממחרת השבת and the time of the Feast of Weeks. The Feast of Weeks is, according to Lev. 23, 15-16, to be observed on the fiftieth day after the waving of the sheaf. The "wave-sheaf," עומר, is to be offered "on the morrow after the sabbath" ממחרת השבת יניפנו הכהן. Tradition interprets ממחרת השבת "from the day after the holy convocation," i. e. from Nisan the sixteenth. The Boethusians interpreted ממחרת השבת to mean the day after the weekly sabbath that occurs during the feast of the unleavened bread, so that Pentecost is celebrated always on the first day of the week (Menaḥot 65*a*; Megillat Taanit 1, 2; Sifra on Lev. 23, 15 and parallels). This is also the Samaritan[66] and Karaite[67] interpretation of ממחרת השבת.

But to adduce this Karaite view as evidence of the Karaite descent from the Sadducees is hardly justifiable. As Geiger himself (*Urschrift*, 138-139); Wellhausen (*Die Pharisäer und die Sadducäer*, 59 ff.); Schürer (II, 334); Poznański (*Abraham Geiger, Leben u Lebenswerk*, 365) pointed out, this Boethusian interpretation of ממחרת השבת does not go back to Sadducean tradition but originated in the animosity of the Boethusian priests-aristocrats against the Pharisees after having been deprived by them of their

[66] See Wreschner, Intr., XXIII; S. Hanover, *Das Festgesetz der Samaritaner nach Ibrahim ibn Ja'kūb*, Berlin 1904, text, p. VII; comp. *ib.*, 62-63; Geiger, *Nachg. Schr.*, III, 294-296. The Samaritans and the Karaites differ, however, in the following essential question, namely, when to count if the fifteenth of Nisan occurs on Sunday. The Karaites begin on it to count the seven weeks. The Samaritans would begin counting on the first of the next week and thus offer the עומר *post festum*. See Geiger, *l. c.*, 296; Hoffmann, *Leviticus*, II, 164. For the Falashas, see A. Epstein, *Eldad ha-Dani*, 154 ff.; *id.*, *REJ.*, XXII (1891), 13 ff.

[67] See on it lastly Poznański, *Gedenkb. zur Erin. an D. Kaufmann*, 173 ff. Some Karaites trace their interpretation of ממחרת השבת to R. Phinehas b. Jair. See Pinsker, II, 16-7; comp. Frankl, *MGWJ.*, 1876, 115 ff.; Epstein, *Eldad ha-Dani*, 158, note.

prerogative to regulate the calendar and was never carried out in practice.

The only agreement between the Sadducees and the Karaites known to us is their rejection of "water libation," נסוך המים, on the Feast of the Tabernacles.[68] See Jefeth b. Ali (Pinsker, II. 23): נסוך המים לא צוה יושב הכרובים לא בפנים לא בחוצה: האומרים במצות נסוך המים הוסיפו על מאמרו הוא הדבר אשר ה' לא דברו...; see also Mibḥar, Num. 28*b*, and טירת כסף, *ad loc.*

Thus, as we have seen, in all the differences between the Sadducees and Pharisees recorded in Talmud and Megillat Taanit the Karaite halakah (as far as Karaite opinion is known to us), with the exception of מחרת השבת and נסוך המים, either agrees with the Pharisees against the Sadducees, or is in itself undetermined by reason of divergent views among the Karaites themselves.[69]

The mention by the Karaites Ḳirkisani and Ḥassan b. Mashiaḥ of a work (or works) composed by Zadok the founder of the Sadducean party, is considered by many scholars[70] proof of some relation existing between Sadduceeism and Karaism.

Schechter has established close relation of *"Fragments of a Zadokite work"* discovered and published by him (*Jewish Sectaries*, Cambridge 1910, vol. I.) with the בתאב

[68] Sukkah 48*b*; Yoma 26*b*; comp. Maim. Commentary on Sukkah 4, 9. See on it lastly Feuchtwang, *MGWJ.*, 1911, 49 ff.

[69] See also Grätz, V[4], 495. This examination of the relation of the Karaite halakah to the Sadducean views known to us discloses how unfounded are the assertions of Weiss (*Dor*, IV, 85); Neubauer (*Aus der Petersburger Bibliothek*, 2); Fürst (*Geschichte d. Karäerthums*, I, 13 ff.); Harkavy (Grätz, *Geschichte* V[4], 477 and elsewhere); Poznański (*REJ.*, XLIV (1902), 173) and others who follow Geiger, that the Karaites agree with the Sadducees in the differences between the latter and the Pharisees.

[70] See Harkavy, *l. c.*, 776; Poznański, *REJ.*, *l. c.*, 176-7; V. Aptowitzer, *Die Rechtsbücher der nestorianischen Patriarchen u. ihre Quellen*, 8.

אלצדוקיה mentioned by the above-named tenth century Karaites. As Schechter himself says: "The term Zakokites naturally suggests the Sadducees; but the present state of knowledge of the latter's doctrines and practices does not offer enough points of resemblance to justify the identification of them with our sect" (*Intr.*, XXI). However, if these fragments *do* contain Sadducean traditions and practices,[71] they afford no support of the Sadducean-Karaite theory, but rather disclose further proof that in seeking for the origin of Karaism and its halakah we must cut adrift from any theory that would link it with Sadduceeism.

One of the two main and specfic accusations of this Sect against their antagonists is polygamy (p. 4, ll. 20 ff.) which nearly all Karaites allow if it does not interfere with the husband's duties to his first wife and is not לצרור.[72] See

[71] See Israel Lévi, *REJ.*, 1911, 162 ff.; K. Kohler, *American Journal of Theology* 1911, 432; comp., however, G. F. Moore, *Harvard Theological Review*, 1911, 358, 270, and Poznański, *Jewish Review*, September 1911.

The suggestion of Bacher (*ZfhB.*, 1911, 19) that these Zadokites represent a group of Sadducean priests who, not long before the destruction of the Temple, in consequence of the victory of the Pharisees, left Palestine, is based on the theory of Büchler-Chwolson that not until a decade before the national catastrophe did the Pharisees control the national life of the people—a theory which is still to be proved; comp. A. Epstein, *MGWJ.*, XL (1896), 130-140. Kohler (*l. c.*, 431) states that "The Fragments of a Zadokite Work" discovered by Schechter "strongly confirms the theory of Abraham Geiger as to the relationship of Samaritanism and Karaism to Sadduceeism" and that "Professor Schechter has made it highly probable, if not certain, that the Document brought to light by him formed the very source of Anan's system, which, as Kirkisani relates, was founded upon the books of Zadok" and: "We thus possess in this Document the connecting link between the ancient Sadducean and Samaritan lore and the doctrines of the Karaites in a far more direct form than Geiger and Harkavy could expect" (*l. c.*, 432-3). The following examination of the halakah contained in this Document will show how erroneous these assertions are.

[72] Comp. Leḳaḥ Ṭob to Deut. 21, 15 referred to by Schechter, XVII, n. 16. Gittelsohn, *Civil-Gesetze der Karäer*, Berlin 1904, 11, n. 9, is to be corrected accordingly.

Harkavy, סה"מ לענן, 105, 115, 109, 127; Hadassi (Alph. 324 (119*d*); comp. also Alph. 321-2, 365 (135*b*)); Aaron b. Joseph (Mibḥar, Lev. 33*b*); Samuel al Magrabi (MS., 214*b*); Aaron b. Elias (גן עדן, 146*d*, 154*b*; כתר תורה, Lev. 49*a*); Elias Bashyazi (אדרת אליהו, נשים, ch. 5); Mordecai b. Nisan (לבוש מלכות, 46). A present day Karaite, Samuel b. Shemariah Pigit, Ḥazzan in Ekaterinoslav, writes: כאלו ... חכמינו ע"ה אסרו לקחת שתי נשים, הם לא אמרו זאת מעולם כי אין אצלנו חרם רבנו גרשון רק הם חייבו על פי הכתובים למלאות אית חובתו (אגרת נדחי שמואל כנגד נשיו והיא שאר כסות ועונה, St. Petersburg 1894, I, 176); comp. also Schechter, *l. c.*, p. XIX, n. 22.

According to this Sect "Fish may be eaten only if while still alive they have been split open and drained of their blood" (p. 12, ll. 13-14; comp. p. LI, n. 23), not requiring that the fish be *caught* by an Israelite. Anan (*JQR.*, XIX, 143; comp. *ib.*, 138) and many other early Karaites[11] (Hadassi, Alph. 235 (80*d*); Jacob b. Reuben quoted in טירת כסף to Mibḥar; Num. 10*b*, lett. 55) held, in agreement with the Samaritans (Wreschner, 51), that only fish caught

Schechter (pp. XVII, XIX, XXXVI, n. 3) believes that this Sect prohibited divorce and regarded a second marriage during the life-time of the first husband or wife, even after divorce, as fornication (comp. *JQR.*, 1911, 138). This view is as foreign to the Karaite halakah as to Tradition; see above. This Sect decries also the Pharisaic regulation of the calendar. If the calendar of this Sect was a solar one (comp. Schechter, XVI, XX and Kohler, *l. c.*, 429), the Karaites differ in this important point from this Sect as much as the Rabbanites.

[11] It may be pointed out that a similar view is quoted in Midrash (Gen. r., 7, 2 and parallels) in the name of Jacob of כפר נבוריא who seems to have been suspected of some מינות (comp. Eccl. r. 7, 47; המגיד, vol XIV, 245). The later Karaites rejected this view. See כתר תורה, Num. 15*b*: אם את כל דגי הים יאסף : נאמרה אסיסה בדגים כפי רוב המנהג לא שהאכיסה [ב]מקום השחיטה שאם כן צריך להיות אסיסת ישראל מכשרת ולא אסיסת גוי; so also גן עדן, 101*b*; comp. also Samuel al-Magrabi, *l. c.* The requirement that the blood be drained from the fish before it is eaten suggests, as Schechter p. LI, n. 23, points out, that this Sect prohibited the eating of

by an Israelite may be eaten. Moreover, "splitting open the fish while still alive," which is required by this Sect, is *expressly forbidden* by most of the Karaites. See Samuel al Magrabi, ed. M. Lorge, *Die Speisegesetze der Karäer von Samuel el Margrebi*, Berlin 1907, 21; Hadassi, Alph. 234 (89*d*); comp. also *JQR.*, XIX, 143, beg. אדרת אליהו, ע' שחיטה, ch. 23; אפריון, 25.

Schechter (pp. XVIII, XLIX, notes 16, 24, LX) pointed out several agreements between the Karaite halakah and that of this Sect in the details of sabbath-observance. Extreme sabbatarianism is, however, a general sectarian propensity. Moreover, the Karaites differ from this Sect in the following laws of the sabbath.

According to this Sect (p. 11, ll. 16-17) "if any person falls into a gathering of water or unto a place of .... he shall not bring him up by a ladder or a cord or any instru-

the blood of fish. This is also the view of Daniel al-Kumsi (Kirkisani, ed Harkavy, 316). So also Hadassi, Alph. 234, end and Aaron b. Elias (גן עדן, 93*c*; כתר תורה, Lev. 19*a*). Comp. Bacher, *MGWJ.*, 1874, 272. Many Karaites, however, oppose this view. See Mibhar, Lev. 12*a*, and טורת כסף, *ad loc., lett.* 65; Samuel al Magrabi, *l. c.*, 16. Kohler's contention (*l. c.*, 427) that the Book of Jubilees agrees on this point with Tradition against this Sect is not proved; see Book of Jubilees, 6, 10; 7, 28.

Many Karaite authorities agree with the law of this Sect (p. 12, ll. 14-15) that locusts are to be killed in water. See Hadassi, Alph. 235 (89*d*); Jacob b. Reuben (*ZfthB.*, IV, 73); Samuel al-Magrabi, *l. c.*, 9, 21; גן עדן, 101*c*; אדרת אליהו, ע' שחיטה, ch. 24. Schechter (XXIV, LI, n. 20) believes that this Sect considered honey to be אבר מן החי and therefore prohibited it. It is, however, more probable that מעגלי הדבורים (p. 12, l. 12) refers, as Schechter himself (*l. c.*) suggests, to the particles of the bees which are mixed up with the honey and is, perhaps, to read מרגלי הדבורים. See Asheri, on Aboda Zarah, 68*b*: תימה היאך אנו אוכלין הדבש והלא רגלי הזבוב מעורבין בו. Anan (Harkavy, 3) and the later Karaites allowed the use of honey (גן עדן, 92*d*, 93*a*). It is, however, doubtful whether this was also the view of the earlier Karaites many of whom prohibited even eggs as אבר מן החי; see Hadassi, Alph. 232 (89*c*) and Alph. 308 (114*c*). The view of Lesynsky (*Die Sadduzäer*, Berlin 1912, 40) that the Sadducees prohibited honey is untenable; he overlooked Judg. 14, 8-9.

ment." (See Schechter, XLIX, n. 39; I. Levi, *REJ.*, *l. c.* 198, n. 14; Moore, *l. c.*, 365; Kohler, *l. c.*, 425). This law is against the Karaite halakah as well as against Tradition. The Karaites agree[74] with Tradition (Shabbat 18, 3; Yoma 84*b* ff.; Mekilta on Exod. 31, 14 and parallels) that for the saving of a human life the sabbath is to be desecrated. See Hadassi, Alph. 148; 179; Mibḥar, Exod. 38*a*; גן עדן, 34*a*; עי' שבת, אדרת אליהו, ch. 21; אפרין, p. 9.

This Sect, like the *Book of Jubilees* (50, 12, comp. v. 9), prohibited[75] fasting on sabbath. Most of the Karaites, however, allow and even commend fasting on the sabbath. See Hadassi, Alph. 150 (56*d*); comp. Alph. 244 and 264. So also Samuel al Magrabi, ed. Weisz, *Traktat über den Sabbat bei den Karäern*, Pressburg 1907, 14; comp. also גן עדן, 36*a*; Elias Bashyazi in his אגרת הצום and in עי' שבת, אדרת אליהו, ch. 11, but see אפרין, p. 8. It may also be pointed out that the two most important Karaite devia-

[74] Grätz (*Geschichte*, V[4], 186) states that Anan prohibited medical treatment on the sabbath. I do not know his authority for this statement. See Hadassi, Alph. 301, letters צ, ק (112*b*) and Levi b. Jepheth quoted by Harkavy, ספר המצות לענן, 132. Anan relying on Exod. 15, 26 prohibited *altogether* the use of medicine and of physicians (Kirkisani, quoted by Harkavy in Grätz, V[4], 487; comp. Hadassi, Alph. 207 (82*a*)). It is only in case of ספק פקוח נפש that some Karaites hold that it is not דוחה שבת. See Hadassi, Alph. 179 and Alph. 364 (135*a*) and Joseph b. Abraham quoted in גן עדן, 34, and in עי' שבת, אדרת אליהו, ch. 2; see, however, Maim., ח' שבת, 2, 3.

Aaron b. Joseph (Mibḥar, Exod. 38*a*) quotes I Sam. 21, 7 as proof that פקוח נפש דוחה שבת. This verse is adduced also in Matthew 12, 4 and in Yelamdenu (Yalḳuṭ, II, 30) in this connection.

[75] This seems to be the meaning of אל יתערב איש מרצונו בשבת (p. 11, ll. 4-5; comp. p. XLIX, n. 19; I. Levi, *REJ.*, *l. c.*, 197; Bacher, *ZfhB.*, XV, 21, n. 5; Kohler, *l. c.*, 424.) reading יתרעב for יתערב; comp., however, Moore, *Harvard Theological Review*, 1911, 246. The Falashas postpone even the Day of Atonement when it occurs on sabbath.

tions from Tradition in the laws of the sabbath, namely, the prohibition to have fire in the house on the sabbath and the prohibition of cohabitation on the sabbath-day, which Geiger (*Nachgel. Schriften,* III, 288 ff.) and Harkavy (Grätz, *Geschichte,* V⁴, 478) believe,[76] go back to Sadducean Tradition, are *not* shared by this Sect.

The law of this Sect that water in a rock not sufficient for immersion is contaminated, like water in a vessel, when touched by an unclean person (p. 10, ll. 13-14) is against the Ḳaraite principle that water does not contract uncleanness. See Ḳirḳisani (quoted by Harkavy, Grätz, *Geschichte,* V⁴, 488) who states that this was the view of Anan. So also Hadassi, Alph. 235, 286, 295; Mibḥar, Lev. 28*d;* גן עדן, 98*d* and 105*c;* כתר תורה, Lev. 28*a;* ארזת אליהו 72.[77]

[76] See also Fürst, *Geschichte d. Karäerthums,* I, 11. While the opinion that the *Sadducees* also prohibited cohabitation on sabbath may be justified on the hypothesis of Geiger that any divergence from traditional halakah which is common to the *early* Samaritans and the Karaites goes back to a pre-Pharisaic (Sadducean) tradition, since we find the early Samaritans holding this view (Frankel, *Einfluss,* 253, stands alone in his opinion that this prohibition was adopted by the Samaritans from the Karaites; comp. Wreschner, 18-19), there is *no* reason to assume that already the early Samaritans prohibited having light in the house on sabbath. The arguments adduced by the Samaritans Manugga (Wreschner, 16, 17) and Ibrahim b. Ja'kūb (who knew the Karaite view; comp. Geiger, *N. S.,* III 289) for this prohibition which are *borrowed from the Karaites* (Wreschner, 18) tend to show that this prohibition was accepted by the later Samaritans from the Karaites. Nor is it probable that this prohibition resulted from the ancient interpretation of the concept מלאכה (Geiger, *l. c.;* comp. Poznański, *REJ.,* XLIV 174 ff. in connection with which see the claim of the tenth century Karaite Ibn Saquie, who, like Geiger, believed in the existence of a more ancient Halakah (*JQR.,* XIII, 664; הקדם, I, 1908, 125), as to the reading in Tosefta Shabbat 1, 23; אין סותקין מים לגינה; comp. *JQR., l. c.,* 662; הקדם, *l. c.,* 120).

[77] See, however, the view of Joseph b. Abraham (quoted in Mibḥar, *l. c.*) that מים תלושין contract uncleanness. The view of this Sect agrees

According to this Sect (p. 10, ll. 11-12) no man ritually unclean shall cleanse himself in the water of a vessel. As Schechter (XLVIII, n. 3) remarks, this law is directed against מים שאובים. The Karaites, however, not only allow מים שאובים (comp. *MGWJ.*, 1909, 469) but, as Ḳirḳisani informs us (quoted by Harkavy, *l. c.*), it was the view of Anan that one who does *not* bathe in a vessel remains unclean.[78]

The two laws contained in p. 12, ll. 15-19 are, as Schechter (p. LI, n. 27) remarks, against the Traditional view that only כלי and תלוש are capable of contracting and communicating Levitical uncleanness.[79] The Karaites agree with Tradition *against* this Sect. See Anan: ודק קרא וכתב אשר יעשה מלאכה בהם לאורעד דכל מאנא דלא נמר מאניה למעבד ביה עיבידתא לא מיטמיא (ed. Harkavy, p. 51; סה"מ לענן

partially with Miḳwaot 1, 1 ff. (according to the interpretation of Maim. in his commentary *ad loc.* and טומאת אוכלין, 15, 1) that water less than ארבעים סאה (אשר אין בו די מרעיל, p. 10, ll. 12-13 may also mean less than (מ' סאה) contract uncleanness if בבונה even when מחובר.

Ps.-Jon's rendering of Lev. 11, 36: וגובין בית כנישות מיין נבעין is against our halakah. It may also be pointed out that the Dositheans held, like this Sect, that water is מקבל טומאה; comp. Kirchheim, ברמי שומרון, 25.

[78] The Samaritans, according to p. Abodah Zarah 5, 4, agree with Tradition on מים שאובים; comp., however, ר"ש to Miḳwaot, 8, 1.

[79] It must, however, be pointed out that the law of this Sect (p. 12, ll. 17-18): וכל כלי מכסר או יתד בכותל אשר יהיו עם המת בבית מטמא בטומאת אחד כלי מעשה (r. בטומאת) agrees with the view of Hadassi, Alph. 290, 292, that in the case of Num. 19, 18 (טומאה (טומאת מת) is contracted and communicated even when מחובר. This view is not shared by the other Karaites. See Mibḥar, Num. 10*b*; כתר תורה, Num. 29*b*; גן עדן, 122*c*; אדרת אליהו, ע' טומאה וטהרה, ch. 20. Even in case of תנור וכירים (Lev. 11, 35; see Rashi and Naḥm. *ad loc.*, Shabbat 125*a*; Maim., כלים, 15, 6 and commentary to כלים 5, 1) it is the opinion of most of the Karaites that it is not מקבל טומאה when מחובר. See כתר תורה, *ad loc.* (28*a*); גן עדן, 106*a*; but see Hadassi, Alph. 292 and Mibḥar, Lev. 18*a*. Ps.-Jon and Yalḳut on Num. 19, 18.

comp. *ib.*, p. 58 and 133; Hadassi, Alph. 286; Mibḥar, Lev. 17*a*, 20*a*; כתר תורה, Lev. 26*b*, 28*b*; נן ערן, 103*b*, ff.; אדרת אליהו, 71*b*; אפרין, p. 21).

The Influence of the Works of Philo upon the Karaite Halakah

PENAL LAWS

1. In the laws of homicide the Karaites widely deviate from Tradition. According to Tradition, murder is punishable only when felonious intent to kill has been proved (Sanhedrin 78*b* ff.).[80] Beside intent, antecedent warning immediately before the commission of the crime and its acknowledgment by the offender (התראה) are required (Mekilta on Ex. 21, 12; Sifre on Num. 15, 33 and Deut. 22, 24; Sanhedrin 80*b*; Makkot 6*b* and parallels). The Karaites do not require forewarning in any crime[81] and consider murder punishable even in the absence of intent. See משאת בנימין, 2*a*: המכה אדם ומת מן אותה המכה יומת ואפילו אין מתבוין להרגו שנא' מכה איש ומת. So also Samuel al-Magrabi (Gitelsohn, 22). Intent to kill is required by the Karaites only when the missile by which the killing has been effected was not likely to cause death. See נן ערן, 176d: והרוצחים חלקם הכתוב לשלש מעלות יש רוצח שרצה את הנפש .... אך הכתוב הפליג בענין זה הרוצח שאם כון להכותו לבד והכהו בדבר אשר לא יתכן למות בו והוא מת זה יקרא רוצח בשגגה · אך אם הכהו בדבר שימות בו ומת זה נמנה בחזקת רוצח מזיד שטעם מזיד שלא בדק אם

[80] According to R. Simeon (Sanhedrin 79*a*) and Rabbi (Mekilta, Mishpaṭim, 8) murder is not punishable even in case of miscarried felonious intent, i. e. when a man intending to *kill* a person killed another instead.

[81] Mibḥar, Exod. 42*a*: וכן אמרו אינו חייב עד שיתרה בו וכן כל חייבי לאוין וחייש התראה יתירה מן לאו שבתורה; so also נן עדן, 177*c*. This seems also the opinion of Philo; see *Werke Philos*, II (Breslau 1910), 263, n. 2.

ימות בו או לא ימות. (Comp. also Mibḥar, Exod. 32*b* and כתר תורה, Numb. 49*b* and Samuel al Magrabi (Gitelsohn, 14) in which case the offender would, according to Tradition, not be punishable at all (Mekilta to Ex. 21, 18; Sifre to Num. 35, 17 (ed. Friedmann 61*b*); Sanhedrin 79*a*; Maimonides, רוצח, 3, 1-3.).[82] Tradition punishes murder only when the murderer has laid his hand on the victim and the death has resulted from such *direct* assault; handing another poison, unless actually forcing it in his mouth, or leading him to a place where in a short while a force of nature or a beast will kill him, is thus not punished by death (Sifre to Num. 35, 17; Sanhedrin 76*b* ff.; Maim., רוצח, 2, 2 ff.). The Karaites do not require the death to be the direct result of the action of the murderer. The Karaites accept the view of R. Judah b. Bathyra (Sanhedrin 78*a*) in case of murder committed by several people simultaneously. See והנהרג ע"י אלף אנשים ויותר כלם חייבים מיתה, משאת בנימין 2*a*. See also Hadassi, Alph. 152 and Alph. 166; גן עדן, 177*c*; and Samuel al Magrabi, MS., 84*a*: ואין הפרש אם התורג לנפש אם הוא אחר או רבים בחיוב זה ... הכל מיחויבים בהריגה ...; and the opinion of Beth Shammai (Ḳiddushin 43*a*) concerning murder committed through an agent. See גן עדן, 177*b*: ואחר אם יעשהו האדם בעצמו או על ידי צווי; comp. Hadassi,

[82] Nor do the Karaites, in case of the defendant's confession of any crime, require witnesses to establish guilt. See Benjamin Nahawendi, משאת בנימין 1*c*: ולפני בית דין הודאת פיו כשני עדים נאמנים; so also Hadassi (Alph. 357ת): תורת חוטא אשר יורה הוא על עוונו הוא כשני עדים; see also Alph. 370; so also Samuel al-Magrabi (MS., 105*b*): דע כי אם ידבר בעל הריב על נפשו ויאמר אני עשיתי כן וכן לא יצטרך לעדים וזה בהסך מדעת המחליפים; comp. also Mibḥar, Num. 5*a*; גן עדן, 194*d*; אדרת אליהו, 98*a*. The talmudic principle is אין אדם משים עצמו רשע, no man can incriminate himself, confessing of guilt not being admitted as evidence (Sanhedrin 9*b* and parallels; Maimonides, סנהדרין, 18, 6; but comp. Weiss, I, 22-3).

Alph. 269 ff.; comp. also Weiss, I, 150. They also consider accessories, accomplices, and counselors to murder punishable equally with the principal. See Hadassi, Alph. 274: וכן המלשין לחברו בין בסתר בין בגלוי להרגו ונהרג הוא הוא כתר. See הרוצח וכלם רשעים הם ויהרגו ברשיעה בבית דינך . . . תורה, Exod. 64*b*-65*a*: ובבר בארנו בספר מצות אופני הדרכים שמעצדם יקרא האדם רוצח ויתחיב בין שיהרגנו בעצמי בין על ידי זולתי בין ע"י סם המות בין בעדות שקר בין שיסבב מיתתו או שירצה בהרגתו ... so also בן עזן, 177*b*. See also Samuel al Magrabi (MS. 84*b*): ההרגה תפול על אופנים ממנו הבאה ביד .... ומהם כי ידחה האדם את רעהו ויפול ממקום גבה או לשלג או למים או לאש ... ומהם כי ישקה האחד את חברו סם או יהיה בו חולי וירפאהו בזולת העקרים הראוים לאותו החולי בצדיה ... ומהם כי ירגל האדם ברעהו ויהיה סבה להרגתו... ואין הפרש בכל אשר רברנוהו אם האדם יעשה אותו בנפשו או אומר לזולתו לעשות כי האומר והעושה לא ביניהם הפרש במשפטי התורה ... So also Mibḥar, Exod. 38*a*.

These Karaite laws approach the view of Philo according to whom intent to kill even when not carried out is punished by death (I, 314. Mangey, comp. B. Ritter, *Philo und die Halacha*, Leipzig 1879, 23 ff. and *Werke Philos*, II, 209, note 3).[88]

[88] Josephus (*Ant.* XII, 9, 1) agrees with Tradition that only *action* is punishable. Philo states in this connection (II, 315) that those who with murderous intent prepare poison or any other deadening substance are to be killed *instantly* (Josephus, *Ant.* IV, 8, 34, considers even the keeping of poison punishable by death in which, as Weyl, p. 66 ff., has shown, he followed the Roman law (*Lex Cornelia de sicariis*)). As suggested by Ritter (p. 28), Philo based this law on Exod. 22, 17. The Septuagint translates מכשפה by φαρμακους which has also the meaning of "poisoners." Ritter fails, however, to indicate the source of Philo's assertion that the Law commands that the poisoner is to be executed *immediately*. The peculiar expression לא תחיה instead of the usual מות תמות (comp. רשב"ם and Naḥm., *ad loc.*) must have been taken by Philo to mean "do not suffer him to live even a moment." This interpretation of לא תחיה is also found among the Karaites. Samuel al-Magrabi (MS., 141*b*) says that

2. Ransom for death caused by the unguarded property of a man or through his instrumentality is required, according to Tradition, only in the case of the goring ox (Exod. 21, 29-31), the provision not applying to death caused by any other property or by any cause of danger created by him (Baba ḳamma 5, 6; b. *ib.*, 53*b*; Maimonides, נזקי ממון, 12, 16). The Karaites interpret the law of ransom (v. 30) to apply to all cases where a person meets death through the negligence of the owner of the property or the creator of the cause of death. Thus, whether it be a pit (Ex. 21, 33-35), or a fire kindled on one's premises that spread beyond (*ib.*, 22, 5), or failure of the owner of a house to build a battlement for his roof (Deut. 22, 8)—and a person was killed as a result of such negligence—in all these cases the Karaites hold that the owner of the property or the maker of the fire or pit is to pay ransom, according to Exod. 21, 30. As Hadassi says: תורת השגגה ישגה ולא יזמר ישירו : אשר הועד ולא כסה לבורו ואשר לא עשה מעקה יילנגו ותולד מהם מיתה יחד יכשר לתת כֹּפֶר כתורתך (Alph., 274). See *ib.*, Alph. 270 and 370. See also משאת בנימין, 2*c*: המטמין פח ומצודה וחבל הנחנק בהם א' מן בני אדם ויענש בדמיו וכ"א כי נמצאו בעמי רשעים וגו' · ואם מבקשים כופר נותן בכר וינצל. See also גן עדן, 180*d*: ואולם הנזק הבא מצד הנרמותיו בין בנפש

though the Law reprieves the condemned pregnant woman, in case of מכשפה the execution is not to be postponed since the Law says ואמר לא : לא תחיה תחיה ולא אמר מות תמות הודיענו בזה המאמר כי לא יכשר לנו לאחר מיתתה מעת לעת ואם היא הרה מעוברת כי היא כמו החרם.

[84] Comp., however, Mibḥar., Exod. 43*b*. The Karaites agree also with Philo (II, 324), against Mekilta *ad loc.*, in the interpretation of והמת יהיה לו (v. 34) as referring to the מזיק; Philo (323) and Hadassi, Alph. 273, interpret also והמת יהיה לו in v. 36 as למזיק. So also Benjamin Nahawendi, משאת בנימין, 2*c*, l. 1, but see Mibḥar, *ad loc.*; כתר תורה Lev. 74*a*; comp. also גן עדן, 181*b*.

בין במומים כן יעשה לו ואם לאו יתן כופר יעל רציחתו הזכיר הכתוב ולא תקחו כופר לנפש רוצח ולא על רציחת הגרמותיו · והנה על רציחת ישורו אמר השור יסקל וגם בעליו יומת · ואמר אם כופר יושת עליו ונתן פדיון נפשו ככל אשר יושת עליו · והתורה הזכירה ארבע אבות נזיקין והוא הדין לכלם שאם נהרג נפש באחד מהם יתן כופר. Comp. *ib.*, 178*d*, 181*c*, 182*b* and Samuel al Magrabi, Gitelsohn, 39-40. Further fol. 133*a* (not published) he says: ואם היו שם אנשים או נפשות והשינה אותם האש ונשרפו ומתו יתחיב בכופר נפשים.

A view similar to this Karaite anti-traditional law—that also other cases of criminal negligence are punishable—is held by Philo.

Expounding the law of Ex. 21, 33 (II, 324), Philo says that if a man fall into the pit and die the court shall decide what punishment the digger is to suffer or what fine he is to pay (*οτι χρη παθειν η αποτισαι*). He also says about the law of Deut. 22, 8, that those who fail to make a battlement to their roof commit a crime equal to that of one who digs a pit, and declares: *κολαζεσθωσαν γουν εν ισω τοις αχανη τα στομια των ορυγματων καταλειποντες*; comp. Ritter, 52 and notes.

Philo and the Karaites agree also in the interpretation of v. 29*b* וגם בעליו יומת. Tradition interprets it to mean that the owner, if he does not redeem himself, shall suffer death at the hand of God[85] מיתה בידי שמים (Mekilta, Mishpaṭim, X;

[85] Frankel (*Einfluss*,, 93) believes that the translation of the Septuagint indicates the traditional interpretation, against which see Ritter, 48, n. 2 and 124 ff. and H. Weyl, *Die Jüdischen Strafgesetze bei Flavius Josephus*, Berlin 1900, 153 ff. The view of Geiger (*Urschrift*, 448 ff.) that the ancient halakah interpreted וגם בעליו יומת as מיתה בידי אדם was already shown by Pineles (דרכה של תורה, 193-6) and Weyl (*l. c.*, 144-153) to be unfounded; comp. also Poznański, *Abraham Geiger, Leben u. Lebenswerk*, 378, n. 1.

Sanhedrin 15*b*; comp. Ps.-Jon. to v. 29). The Karaites uphold the literal interpretation of ונם בעליו יומת (i. e. בידי אדם) and take ואם כפר יושת עליו (v. 30*a*) to mean that the nearest kinsmen (גואלי הדם) of the killed are to decide whether to execute him or to take ransom. See Benjamin Nahawendi, משאת בנימין, 2*c*: ואם הוא נודע [השור] ובעליו מועד וממית אדם הוא יסקל ויומת גם בעליו וכה"א השיר יסקל וגם בעליו יומת · ואם גואלי הדם רוצים ליקח ממנו כפר יתן וינצל בעבור כי הרינה זו על ידי הבהמה לפיכך הרשות בידם אם רוצים הורגים ואם רוצים לוקחים כפר : שכה"א אם כפר יושת עליו. See also Hadassi (Alph. 270, 370); גן עדן, 177*d*, and כתר תורה, *ad loc.* (73*b*); Samuel al Magrabi (Gitelsohn, 35-36).

Philo holds the same view, and in his exposition of this law (II, 323) says that the owner of the goring ox is guilty of the man's death. He shall be put to death or pay ransom. The court shall decide his punishment. The Karaites thus agree with Philo and differ only as to the question with whom rests the option of death or ransom; while according to Philo (so also Mekilta, *ad loc.*) the court is to decide, the Karaites hold that it rests with the גואלי הדם.

3. Tradition interprets the law of Ex. 21, 24-26 and Lev. 24, 19-21 to mean money indemnity (Mekilta *ad loc.*, Mishpatim 8); Sifra on Emor. 24, 19; Baba ḳamma 8, 1; Ketubbot 35*a* and parallels; comp. Maimonides, חובל ומזיק 1, 1 ff.).

Philo takes these verses literally and in several places vigorously advocates the practice of *lex talionis*. See Ritter, *Philo und die Halacha*, p. 18 ff. The *lex talionis* is accepted in all its severity also by nearly all the Karaites. Benjamin Nahawendi interprets עין תחת עין literally. See Benjamin Nahawendi, משאת בנימין, 2*d*; העשה כל מכה ומום בחבירו

נפרע שנאמר באשר עשה בן יעשה לו. So also Ben Zuta, a Karaite contemporary of Saadia Gaon (Ibn Ezra on Exod. 21, 24); Jepheth b. Ali (*MGWJ.*, XLI, 1897, 205); Hadassi (Alph. 275 (104*c*); 370 (146*b*); 373 (149*c*); comp. also Alph. 170); Aaron b. Joseph (Mibḥar, Exod. 42*a*); Aaron b. Elias (נן עדן, 179*a* ff.; כתר תורה, Exod. 71*b* ff.); Samuel al Magrabi (Gitelsohn, *l. c.*, 28-9); Abraham b. Josiah (אמונה אמן, 24*b*); Solomon Troki (אפריון, 39).[86]

[86] See also Rapoport, בכורי העתים, 1831, p. 34. L. Löw, *Gesammelte Schriften*, I, 287 is to be corrected accordingly. Harkavy, ס"חמ לענן, 198, believes that Anan also upheld *lex talionis;* comp. also Schechter, *Jewish Sectaries*, II, 7, ll. 5-7. The Samaritans also interpret עין תחת עין literally (Klumel, *Mischpatim, ein samaritanisch-arabischer Commentar*, XX; *JQR.*, 1911, 210 is to be corrected accordingly). Some Karaites restrict the application of *lex talionis* to intentional permanent injury; still others leave it to the discretion of the court to pronounce sentence of equal punishment or indemnity; comp. Mibḥar, Exod. 53*a;* כתר תורה, Exod. 71*b* ff. According to the Scholion of Megillat Ta'anit ch. 4 (Neubauer, *Mediaeval Jewish Chronicles*, II, 8; comp. Grätz, III[4], 693) the *Boethusians* extended their literalism to *lex talionis*. Geiger at one time (*Urschrift*, 148, but see *id.*, *Sadducäer u. Pharisäer*, 22; *Nachg. Schriften*, V, Heb., 162), Rapoport (דברי שלום ואמת, 15), and Ritter (133-4) deny this report any historical basis (comp. Jost, *Geschichte d. Judenthums*, I, Leipzig 1885, 221; L. Löw, *l. c.*, 286; Büchler, *MGWJ.*, L (1906), 679, n. and the literature adduced by Ritter, *l. c.*). Such an important difference would not have been left unnoticed in the talmudic literature. It is also improbable that Josephus, who was an avowed Pharisee (*Vita*, II, end) and who in all the differences between the Sadducees and the Pharisees, as far as his opinion is known to us, sides with the Pharisees (except in the interpretation of באש תשרף in Lev. 21, 9; see Olitzki, *Flavius Josephus und die Halacha*, Berlin 1885, 42, 44, 54 and Ritter, 26), would have accepted the literal interpretation of עין תחת עין (*Ant.* IV, 8, 35) if it were anti-Pharisaic.

Geiger (*Nachg. Schriften*, V, Heb. 162) claims that the ancient halakah also interpreted עין תחת עין literally, as R. Eliezer held this view (Baba ḳamma 84*a;* see the version of R. Eliezer's opinion in Mibḥar, Exod. 42*a*, which he seems to have taken from Mekilta, Mishpaṭim, 8, reading R. Eliezer for ר' יצחק; comp. Geiger, *l. c.*, and L. Löw, *l. c.*, 287, n. 2). See I. Halevy, דורות הראשונים, vol. I*c*, 425 ff. for elucidation of the traditional view and that of R. Eliezer; comp. S. Munk, *Guide des Égarés*, 371, n. 1. Philo (II.

Philo (II, 323, end) states that the owner of an animal that killed a slave is to pay the *full value* of the slave. Ritter (49) considers this view of Philo to be against Exod. 21, 32: שלשים שקלים יתן לאדניו. Many Karaite authorities agree with Philo and hold that v. 32 establishes the minimum fine and that if the value of the slave be more than שלשים שקל, the owner is to be paid the full value of the slave. Other Karaites hold that by שלשים שקל the law indicates the value of the average slave and that in all cases the owner of the animal is to pay the full value of the slave. See גן עדן, 181*a*: ואם המית עבד דן הכתוב לתת שלשים שקלים לבעל העבד. ובעלי הקבלה אמרו שעליו יש להקל ולהחמיר אחר עבר שבפחותים ואחד עבד שבחשיבים ערך אחד גדולים וקטנים עבד ושפחה אע"פ שיש מיכמי הראים חולקים בזה: יש מהם אומרים שזה ערך הפחות אבל יש להוסיף עליו. ומהם אומרים יש ערך בינוני ויש להוכיף ולגרוע. So also כתר תורה, Exod. 73*b*.

The Karaites agree with Philo also in the interpretation of Exod. 21, 19 אם יקום והתהלך בחוץ על משענתו. Tradition (Mekila *ad loc.* (Mishpaṭim, 6); Onkelos and p. Ketubbot 4, 4 (28*c*; but see Ps.-Jon. and Naḥm. *ad loc.*), taking על משענתו figuratively, interprets it to mean that the offender is not liable for death consequent on a blow, if in the interval the injured party has so far recovered that he is able to walk about "on his own strength," i. e. without others' assistance. Philo (II, 317; Ritter, 32, note 3) takes על משענתו literally, namely, that even when the injured party required the support of a staff or of a man the offender is

313; Ritter, 22) holds (against Mishnah Sanhedrin 9, 1; Mekilta on Exod. 21, 12) that the murderer is to be killed in the same manner in which he committed the crime (so also Book of Jubilees 4, 32). This is also the view of many Karaites. See S. Citelsohn, *Civil-Gesetze der Karäer von Samuel al-Magrebi*, 14, ll. 13-15; see, however, גן עדן, 177*c*. The opinion of Büchler (*MGWJ.*, L (1906), 679 n., 692, 706) that this was also the view of the Sadducees is not supported by any proof.

to be acquitted. The Karaites interpret על מישענתו, like Philo, literally; see כתר תורה, Exod., *71a*: ובעלי הקבלה ... על מישענתו אמרו במישענת עצמו ואינו נכון. So also Mibḥar, *ad loc.;* נן ערן, 180*b;* Samuel al Magrabi (Gitelsohn, 23).

The Karaites interpret also Deut. 25, 12 וקצות את כפה against Tradition (Sifre *ad loc.;* comp. Midrash Tannaim. ed. Hoffmann, 168 ff.) literally; see Mibḥar *ad loc.* (*22b*); כתר תורה *ad loc.;* Samuel Al Magrabi, (Gitelsohn, 29). So also Philo (II, 328): *Εστω δε η δικη χειρος αποκοπη της αψαμενης ὡν οὐ θεμις.*

4. Philo deviates in his exposition of Exod. 21, 22 ff. from Tradition which refers אסון in verses 22-23 to the woman and holds the man guilty of murder if he killed the mother, but not punishable for the deadly effect of the blow on the unborn child, regarding the foetus only as part or limb of the mother (*pars viscerum matris*) and without an independent existence (Mekilta *ad loc.;* Baba ḳamma 48*b* ff.; see also Ohalot 7, 6 and Ps.-Jon. to v. 22). Philo (II, 317 comp. 319, beg.) takes this law to refer to the embryo and interprets these verses: If the foetus miscarried by the blow was not formed at the time of the blow the offender is not liable for murder (verse 22), but if the embryo has assumed a distinct shape and is completed the offender shall die for the death of the child (verse 23).[87] Philo, though considering the unborn child to be a part of the mother (II, 319), holds that the law of Lev. 22, 28

[87] Philo follows the Septuagint in the interpretation of these verses; see Ritter, 35. Josephus (*Ant.*, IV, 8, 33) agrees with Tradition and refers אסון to the mother only; comp. Geiger, *Urschrift*, 436-7. Yet he holds, like the Karaites (Hadassi, Alph. 270 (*103b*)), causing abortion to be murder. See *C. Ap.*, II, 24; comp. M. Zipser, *Des Flavius Josephus Werk... gegen Apion*, 164. Some Karaites follow Tradition in the interpretation of אסון. See Benjamin Nahawendi, משאת בניימין, *2d;* כתר תורה, Exod. *71b*, below.

includes the prohibition of sacrificing a pregnant animal, a law unknown to Tradition (II, 398; comp. Frankel, *Ueber palästinische u. alexandrinische Schriftforschung*, 32, n. 6; Ritter, 109 and notes). Philo (*l. c.*; comp. Ritter, *l. c.*, n. 3) seems also to believe, against Tradition (Arakin 7*a*; comp. Ps.-Jan. to Deut. 22, 22), that the law reprieves a pregnant woman condemned to death. These anti-traditional views of Philo are found also among the Karaites. The Karaites, like Philo, consider the killing of an embryo murder punishable by death (Hadassi, Alph. 238ᵃ, 270ᵇ, 275ᵃ; see also references given below) and interpret אסון in verses 22, 23 to refer to the embryo or to the mother and the embryo. See Ḳirḳisani (ed. Poznański) in *Gedenkbuch zur Erinnerung an David Kaufmann*, Breslau 1900, 186; Hadassi, Alph. 238; 270; Mibḥar, Exod. 42*b*; כתר תורה, Exod. 71*b* ff.; גן עדן, 177*d*; 179*c-d*; Samuel al Magrabi, ed. Gitelsohn, 27 ff. They also consider the killing of a pregnant animal violation of Lev. 22, 28 and go even further than Philo in prohibiting the שליל a foetus found in a killed animal, for food. See Ḳirḳisani, ed. Harkavy, 291; and ed. Poznański, *l. c.*, 184 ff.; Sahl b. Maṣliaḥ (Pinsker, II, 28; comp. *ib.*, 30, 83); Salmon b. Jeruḥam (Poz., *l. c.* 186-7); Hadassi, Alph. 238-240; 308 ; 360 ; 364 (134*d*); Mibḥar, Lev. 15*b*; 39*a*; כתר תורה, Lev. 24*a*; 62*b*; גן עדן, 83*d*. ff.; Samuel al Magrabi, ed. Lorge. 10-11; אדרת אליהו, 64*b* ff.; אפריון. 23; לבוש מלכות, 47; comp. also Ibn Ezra, Mibḥar, and כתר תורה on Gen. 25, 22 and Leḳaḥ Ṭob on Lev. 11, 13 and 12, 8.[88] Many Karaites

[88] See also Frankel, *MGWJ.*, VIII, 400. The Samaritans also apply the law of Lev. 22, 28 to שליל; see Geiger, *Nachg. Schriften*, III, 263-4; 302, V, Heb., 114; Wreschner, Intr., XXVII. Geiger's view (*Nachg. Schr.*, V, Heb., 112 ff.; comp. also Büchler, *MGWJ.*, L (1906), 674, note) that this Samaritan-Karaite opinion is based upon the principle of : עובר לאו ירך אמו, a view which, as Geiger (*l. c.*) believes, was held also by the ancient

prohibit also the execution of a pregnant woman. See Mibḥar on Deut. 22, 22 and טירת כסף *ad loc.*[89] Samuel al Magrabi (MS. 86*a*) states: ואם יאמר אומר אם היא מעוברת היבשר כי תהרג והיא מעוברת, יאמר לו לא יבשר כי תהרג והיא מעוברת אבל יאחרוה לאחר שתלד ואחר לידתה תהרג ואם לא כן נהיה הורגים ישתי נפשות והמישבט אל נפש אחת בהרוגה.

5. Tradition interprets: ונקב שם ה׳ מות יומת (Lev. 24, 16) to mean the cursing of the Divine Name (Sanhedrin 7, 5; Sifra *ad loc.*; comp. Ps-Jon. *ad loc.*: ברם מאן דמפרש ומחרף);[90] so also the Septuagint (comp. Frankel, *Einfluss*, 132) and Josephus (*Ant.* IV, 8, 6). Philo (*Vita Mosis*, II. § 206 ff.) refers this law to any disrespectful mention of the name of God at an inappropriate occasion or place. To this untraditional interpretation of ונקב by Philo, goes back the view of Philo (Tischendorf, *Philonea*, 79; comp. Frankel, *Eidesleistung d. Juden*, Dresden 1840, 21; Ritter, 45-7) that the law punishes a false oath with death. As Philo (*l. c.*, 80) argues, a false oath involves the dishonor of the Divine Name therein employed (comp. Lev. 19, 12)

halakah, is erroneous. The question of עובר ירך אמו is applied in the Talmud to animals and slaves but not to free persons. See also against this contention of Geiger Pineles, דרכה של תורה, 190 ff.; L. Löw, *Ges. Schr.* III, 401; Gronemann, 122, note. It must also be pointed out that most of the Karaites mentioned above do not distinguish in the interpretation of אכזן between a finished and an unfinished embryo.

[89] Kirkisani agrees with Tradition that the execution is not to be postponed (ed. Poznański, *Gedenkbuch zur Erinnerung an D. Kaufmann* 185). Samuel al-Magrabi (ed. Gitelsohn, 38) states that the Law reprieves even a pregnant animal condemned to death! See above, note 83.

[90] For Onkelos *ad loc.*: ודי מפרש שמא see Geiger, *Urschrift*, 274. Chwolson, *Das letzte Passamahl Christi*, 119, overlooked the view of R. Meir (Sanhedrin 56*a*) that מקלל בכנוי is also punished with death. (M. Duschack, *Josephus Flavius u. d. Tradition*, 23 is to be corrected accordingly.) See, however, the opinion of R. Levi פסיקתא דרב כהנא ed. Friedmann, 184*a*: כל מי שהוא מפרש שמו של הקב״ה חייב מיתה שנא׳ ונוקב שם ...

and he applies to it the law of Lev. 24, 16, according to his interpretation of this verse. Most of early Karaites agree with Philo in the interpretation of ונקב שם ה׳ (v. 16). See Anan (ed. Harkavy, 13); ואקדים ליה כי יקלל לאדעך דעל מאן ... דאדכר שכיה דרחמנא בקלילותא קאים דמחייב קטלא.[91] The Karaites, like Philo, also set the punishment of death for false oath.[92] See Hadassi, Alph. 346, 347; Mibḥar, Exod. 37*a*; כתר תורה, Exod. 62*b*; comp. *ib.*, Deut. 24*b*; Samuel al Magrabi (MS., 67*a*); אדרת אליהו, שבועות, ch. 6. They follow also the reason given by Philo. As a false oath involves the dishonor of the name of God the penalty therefor is death in accordance with Lev. 24, 16.[93]

[91] Harkavy's note to it (*ib.*, 198, *s. v.* דברי) is unintelligible. The later Karaites abandoned this interpretation of ונקב; comp. Mibḥar, Lev. 44*b*. For the Samaritan interpretation of ונקב see Grünbaum, *ZDMG.*, XVI (1862), 401 ff.

[92] According to Tradition (Tosefta Makkot 4, 5; b. Shabuot 20*a*) the penalty of a false oath is מלקות; comp., however, תנחומא, וישב, 2 and Nahm. on Lev. 27, 29. See Schechter, *Jewish Sectaries*, I, p. 16, l. 8 and notes, that according to the sect which Schechter designates as Zadokite (see above) "one is to keep a vow pledging him to a particular commandment *even at the risk of death*." The view of Kohler (*American Journal of Theology*, 1911, 417), that according to that sect the penalty of *any* false oath is death is not proved. The Zadokite sect (*l. c.*, p. 15, ll. 1-3) agrees also with Philo (*l. c.*; comp. Frankel, *Eidesleistung*, 19-20) that oaths are not to be taken by God's name. See Schechter, *l. c.*, LIV, as to the Samaritan manner of oath, against which see Kohler, *l. c.*; but see L. Löw, *Ges. Schr.*, I, 193 ff.; comp. also Grünbaum, *l. c.*, 404.

[93] See Afendopolo's appendix to אדרת אליהו, Odessa 1870, 209*cd*: ורוב החכמים וגדוליהם אסקו ודנו מיתה למי שעבר על שבועתו או שקר בה וחללה .... ואמר הרב רבנו לוי ע״ה כי המאר השבועה חייב מות ... ואמר ועם זה כי הראיה יוציא המשפט כי מי יחלל קדש משפטו הוא המות שנאמר ואוכליו עונו ישא כי את קדש ה׳ חלל ונכרתה ומקל וחומר מי חלל שם ה׳ ובן דעת הרב רבנו יהודה האבל ע״ה והחכמים אחרים גדולים עמהם ברבנו ישועה ויפת הלוי ע״ה והחכם האלחי הרב רבנו אהרן הראשון עמהם ... In Lev. 19, 8 quoted by Levi b. Jepheth and Samuel al-Magrabi (*l. c.*) as proof that the penalty of the dishonor of the name of God is death only כרת punishment is mentioned. The

Based on this Philonian-Karaite interpretation of Lev. 24, 16 is the view of the early Karaites that every antinomian utterance or action is punished by death. See Anan (סיהמ, *l. c.*): ומאן דאמא מימר מצות לאו מידי אינון או אוריתא לאו מידי היא או דאמא מי ייי מיחייב קטלא ורגמין ליה כל ישראל; so also Hadassi, Alph. 267: טיב המגדף הוא המפר מצות עשה מעשותו: ביד רמה בזדון הפיר מצותו ודנו בו רגימה בנקמתו; comp. also Alph. 372ה, 373ה, so also Samuel al Magrabi (MS., 108*b*): ודע כי נחלפו החכמים במצות אשר לא נזכר להם משפט בנקימה: מהם מי אמר כי כולם להם משפט מות וכי האדם אם ימרה אשר האמירו ית' בהם בצדיה יחויב מיתה והביא ראיה על זה מאמרו כי דבר ה' בזה ואת מצותו הפר ואמר אחר כי זה המאמר בראיה המביאים אותה כי היא נאמרה על מי אשר כחש במצות התורה או מי יאמר כי המצוה הזאת איננה חוב או יאמר מנין יחויב זה המאמר על דרך הבזיון כי אמר עליו את ה' הוא מנדף?[94] That this Karaite

early Karaites, however, took כרת to mean death by court, מיתה בידי אדם, against the traditional interpretation of the concept כרת as heavenly visitation (comp. Sifra on Lev. 23, 29; Sifre on Num. 19, 13; Moed ḳaṭan 28*a*; p. Bikkurim 2, 1; Maim., תשובה, 8. 1; Ibn Ezra on Gen. 17, 14; Naḥm. on Lev. 18, 29 and Abrabanel on Num. 15, 30). See Hadassi, Alph. 266: כי כל בעלי כרת ביד שופטיהם חייבים במשפט ה' אשר צוה בתורתך; מכורים ביד בהנותם מלכיהם שופטיהם ושוטריהם; ודי עדותם תהיה בם בראשונה ... Death in כרת punishment is by stoning (*ib.*, Alph. 267). See also Ibn Ezra on Lev. 20, 20 and Harkavy, ספר המצות לענן, 141, n. 14, and טירת כסף to Mibḥar, Lev. 37*a*, letters 63, 69. S. Munk, *Palestine* (German ed. by M. Levy, II,438) is to be corrected accordingly. The latter Karaites agree with Tradition; see Mibḥar, Lev. 34*b*, בחר תורה, Gen. 47*b*; Lev. 56*b*; גן עדן, 125*d*; אפריון, 7

[94] Every antinomian action or utterance involves the dishonor of God's name which is, according to the Karaites, punished by death. See Hadassi, Alph. 373 (149*c*): ואם הלול שם ה' ותוריתו על האיש ההוא מיתה בכתוב ... כי את דבר ה' בזה ואת מצותו הפר וגו'. See also Book of Jubilees 30, 8-7. According to some Karaites failure to pray is also punished by death (in accordance with II Chron. 15, 13). So Samuel al-Magrabi (MS., 57*a*): והעוזב את התפילה ולא יעשנה מהבוגדים ויעשה בצדיה ובזדון ועל דרך הבזיון הוא חייב מיתה, ויש מהחכמים ז"ל שאמר כי העוזב אותה על כל פנים חייב מיתה.

view is not due to their fondness for exaggeration but is based on the above-mentioned Philonian interpretation of Lev. 24, 16 and Num. 15, 30 (for Num. 15, 30, see Philo, II, 252 and 404) is evident from the fact that a similar view is held by Maimonides who, in disagreement with the talmudic interpretation (Sifre, *ad loc.*; Horayot *8a;* Keritot *7b;* comp. Rashi, Rashbam, and Naḥm., *ad loc.;* comp. also Mibḥar, Num. 15*a;* כתר תורה Num. *22b*), refers Num. 15, 30 to all *antinomian actions.* See מורה נבוכים, III, 41 (Eng. translation by M. Friedlander, London, 1904, 348-9): "If a person sins presumptuously so that in sinning he shows impudence and seeks publicity; if he does what is prohibited by the Law, not only because of his evil inclination but in order to oppose and resist the Law, he 'reproacheth the Lord' (Num. 15, 30) and must undoubtedly be put to death. ... Even if an Israelite eats meat (boiled) in milk or wears garments of wool and linen, or rounds off the corners of his head, in spite against the Law, in order to show clearly that he does not believe in its truth, *I apply to him the words 'he reproacheth the Lord'* and (I am of the opinion) that he must suffer death as an unbeliever. .. According to my opinion, all the members of an Israelitish community which has insolently and presumptously transgressed *any of the Divine precepts* must be put to death."[96]

6. According to Tradition, cursing parents is punished by death (Ex. 21, 17; Lev. 20, 9) only when the Divine

The Karaites, relying on Lev. 4, 2: מכל מצות..., hold (against Tradition; see Sifra *ad loc.*) that a sin-offering is to be brought for the involuntary transgression of *any* law. See Pinsker II, 73 (the meaning of this passage escaped Poznański, *Karaite Literary Opponents of Saadia Gaon*, 66); Mibḥar, Lev., 6*b;* כתר תורה, Lev. 9*a;* גן עדן, 176*a*, end. See also Philo, II, 246.

[96] See also Maim., רוצח, 4, 10; Z. Chajes, תורת נביאים, Zolkiew 1836, 18*b* ff.

name is used (Sanhedrin 7, 12; Mekilta *ad loc.*). Striking parents is punished by death (Ex. 21, 15) only when the blow is a מכה שיש בה חבורה (Sanhedrin 10, 1; Mekilta, *ad loc.*). Death for the latter offense is by strangulation (*l. c.*). Philo (Tischendorf, *Philonea*, 77) makes death the penalty for *every* manner of insult to parents, and death by stoning the penalty for striking parents (*l. c.* and Frag., II, 629). The Karaites[96] agree with Philo and refer Ex. 21, 15 to *any* physical violence against parents; see Mibḥar, Exod., 41*b*: ומכה אביו ואמו : בכל מיני מכה בין שיש בה חבורה ובין ישאין בה חבורה; so also כתר תורה, Exod., 70*b* and Samuel al Magrabi, ed. Gitelsohn, 17. Nor do the Karaites in Exod. 21, 17 condition the use of the Divine Name. See Hadassi, Alph. 272ב (103*d*); Mibḥar, Exod. 42*a*; כתר תורה, Exod. 70*b*, and Samuel al Magrabi, *l. c.*, 19. They agree also with Philo in making death by stoning the penalty for violence to parents. See Hadassi, Alph. 267ד (102*c*) and כתר תורה, Exod. 70*b*; comp. Samuel al Magrabi, ed. Gitelsohn, 19. Büchler, *MGWJ.*, L (1906), 683.

Philo (II, 330; but see *Quaest. in Ex.* II, § 6) states that distinction is to be made in punishment between insult to a public officer and a private person. Tradition makes

[96] For the Samaritan view comp. *ZDMG.*, XLVII (1893), 681. Mark 7, 10 ff. and Matthew 15, 5 ff. (comp. commentaries) perhaps refer to this older interpretation of Exod. 21, 17: that *every* manner of insult to parents is punished by death. Comp. Wünsche, *Neue Beiträge*, 181-6.

The Karaites decry what they falsely ascribe to the Rabbanites: the opinion that punishment is inflicted only when the curse or blow affected *both* parents; Hadassi, Alph., 249, says: הורו כך במכה אביו ואמו מות יומת ואינו חייב אלא עד שיכה את שניהם בבת אחת ובן בקללה עד שיקללם בבת אחת; so also Alph. 250ם; see also Salmon b. Jeroḥam quoted by Neubauer, *Aus d. Petersburger Bibliothek*, 111. See Sanhedrin, 85*b*; Mekilta on Exod. 21, 17; Sifra on Lev. 20, 9.

no such distinction."[97] This view, however, is found among the Karaites. Jepheth b. Ali (quoted in Mibḥar, Exod. 42*b*) punishes cursing מלך or נשיא with death. Hadassi (Alph. 343ᵈ) states that cursing a righteous Judge is a *capital* crime; so also Samuel al Magrabi (ed. Gitelsohn, 21) who also states (MS., 147*b*) that even the cursing of the patriarch of a tribe or family is punished by death.

MARRIAGE LAWS

7. The issue of a prohibited alliance[98] is a bastard (ממזר) and the law enjoins concerning him: לא יבא ממזר בקהל ה' (Deut. 23, 3). Tradition (Yebamot 8, 3) refers it to marriage. Philo, as was pointed out by Ritter (91, n. 5),

[97] Weiss, *Dor*, I, 126, note, relying on Kiddushin 66*a*: תדיוט שבישראל כך הוא דינו ואתה מלך וכהן גדול, believes this to have been the *Sadducean view* (the מלקות there was not, as Weiss *l. c.*, states, in accordance with Deut. 22, 18, but because Judah (or Eleazar; see Josephus, *Ant.* XIII, 10, 5) was a single witness; see Pesaḥim 113*b*: נגדיה לזונגד ...). See also Josephus, *C. Ap.*, II, 23 that disobedience to the high priest is punished like impiety toward God (comp. *Ant.* IV, 8, 14). It is, however, possible that Josephus had in mind the law of Deut. 17, 12; see Grätz, III², 110, note 1; comp. Maim., Maim., התמ"ש, Sanhedrin, 10, 5: ולכן חייבתו תורה [לזקן ממרא] מיתה לכבוד בית דין ומעלתה כמו שחייב המקלל אביו ואמו מיתה לכבוד אביו ואמו.

[98] Against Geiger's anti-traditional interpretation of ממזר (*Urschrift*, 54 ff.; 350) see Rapoport, נחלת יהודה, 78 ff. For the Septuagint see Frankel, *Einfluss*, 204, and for Philo see Ritter, 91, n. 5. Most of the later Karaites agree with the accepted talmudic interpretation of ממזר (Sifre, II, 248; Yebamot 4, 13; Kiddushin 3, 12; see p. Kiddushin 3, 2; Tosafot Yebamot 49*a*, *s. v.* שמעון; Maim., איסורי ביאה, 15, 1; Frankel, *Grundlinien d. mosaisch-talmudischen Eherechts*, 5, n. 21 is to be corrected accordingly); see Mibḥar, Deut. 19*b*; so also גן עדן, 149*c*: ואיזה הוא ממזר הנולד מאיסורי ערוה מחייבי כריתות; but see Hadassi, Alph. 278ᵃ (105*d*) and Samuel al-Magrabi, ed. Gitelsohn, 11, l. 14. For a peculiar interpretation of the concept ממזר by some early Karaites as referring to the Chazars see Harkavy, *Semitic Studies in memory of Dr. Kohut*, Berlin 1897, 246-7.

interprets this verse, verses 2, 4 (II, 261), and v. 9 (II 393) to mean that the ממזר is not to mingle with the community of Israel and does not refer to marriage. In his exposition of v. 9, (II, 393) he says: "... *καλειν εις εκκλησιαν και μεταδιδοναι θειων λογων, ους θεμις τους αυτοχθονας και ευπατριδας ιεροφαντεισθαι*."[99] This view, as Samuel al Magrabi informs us, was held by many Karaites (MS., 91*b*) ודע כי אשר דברנוהו הוא על דעת רוב החכמים ז"ל וגם התיר קצתם זאת הבעילה על תנאי כי יהיה זרעם פחות והוא כי ישים נתן בתו לירחע עבדו והיה מצרי ... ובדעתם כל הנאמר בו לא יבוא לא ירצה בו הבעילה אבל רצונו בזה בעתות הקרבנות והישמחות בחופות חתנים ומילות ובקהלית האומה והביא ראיה ממאמרו אשר ציויתי לא יבואו בקהל לך אחר אמרו כי ראתה גוים באו מקדשה.

This is the view of many early Karaites. See Hadassi, Alph. 365 (140*b*): דוק המשפט ישל ילד הנולד מן ערוות ומן אשת איש ומן נויה ומכל דרך אסור בזמן זו גלות נדודי : להוציא הילודים ואמותם מיחס זרע הקדש ... ואם יש חפץ לאחד מישראל להתחתן עמהם יכתב בכתובתם בעורם ומלקול ייחוסם לדורות להחרידי כאשר כתוב ולשישן עבד מצרי .....; so also Alph. 373ד (148*d*). Aaron b. Joseph (Mibḥar, Deut. 19*b*) states that Sahl b. Maṣliaḥ (second half of the tenth century) held that marriage with a ממזר is not forbidden: ולא ידעתי טעם לדברי רבנו סהל ישאם יחפוץ ישראל יקחנו [את הממזר]. Sahl b. Maṣliaḥ, evidently, also interpreted לא יבא ממזר בקהל, as did Philo, Hadassi, and the Karaites mentioned by Samuel al Magrabi, to mean that the ממזר is not allowed to mingle in the community.[100] See also Mibḥar, *l. c.*: בכל דבר: לא יבא בקהל ה' והנכון בנשואין לבד; comp. טירת כסף, *ad loc.*

[99] See Michaelis, *Mos. Recht*, II, § 139; Ewald, *Alterth. des Volkes Israel*, 247; comp. also Rapoport, נחלת יהודה, 46.

[100] The interpretation given by Geiger (אוצר נחמד, IV, 21-2) to this view of Sahl is forced and unnecessary. Geiger's reference (*l. c.*, 22) to Sahl's opinion quoted in Mibḥar, Deut. 6*b*, has no bearing on his view

8. In the exposition of the law of Deut. 21, 10-15 concerning marriage with a female captive of war. Tradition makes no distinction between a married woman and the unmarried (Sifre, *ad loc.*; Ḳiddushin 21*b*: ואפילו — אשת ואשת איש). So also Josephus, *Ant.* IV, 8, 23. The Karaites hold that this law refers only to the case when the captive

here. Sabl's interpretation there of התרם תרים אתם (Deut. 7, 2; comp. מירת בכח to Mibḥar, Deut. 65, letter 115) is held by many Rabbanites; see e. g. Naḥm. on Deut. 20, 10. The Karaite anti-traditional view (see Ḳiddushin 3, 13; Yebamot II, 5 and parallels) that children born to a Jew from a Gentile woman are considered to be Jews which caused the early Karaites to interpret להוציא in Ezra 10, 3 as referring to the mothers only (Pinsker, II, 23, n. 12; Geiger, *l. c.*, see also Benjamin Nahawendi, נימוסאת: נישאת, 6*b*: אבל מבנות עכו"מז ואמהות בני בלי שם לא נקראים אלא על שם אביהם שבי יהוציא כי נשים והנזר מהם; similarly Hadassi, Alph. 306[1] (141*d*): רגשות הולודים שנולדו מן העריות ואשת איש ואשה נכרית ישפחה הוא זר ונקרא ער שם ועד בני נכריות ושפחות בתוב להוציא כל נשים אבין הזונה והנולד מהם, so also Alph. 365[1] (140*b*)) goes back to talmudic times and was held by Jacob of כפר נבוראי (p. Yebamot 2, 6; p. Ḳiddushin 3, end; G. rab., 7, 3 and parallels) who seems to have been suspected of some מינות (see above, note 73). See also the early Bible critic (ed. by Schechter), *JQR.*, XIII, 302, lines 22 ff., and note on p. 371.

The assertion of M. Friedmann (*Beth Talmud*, I, 106) that the Karaites, like Tradition (Yebamot 8, 4, b. *ib.*, 76*b* ff. and parallels), interpret Deut. 23, 4: עמוני ולא עמונית is erroneous. All Karaites attack this traditional view. See Elias b. Abraham (Pinsker, II, 105); Mibḥar and כתר תורה *ad loc.*, גן עדן, 146*b*; 149*d ff.*; ארזת אליהו, 93*c*; אורה צדיקים, 17*b*; A. Firkowitsch, תכנית היהם (appendix to the מבחר ישרים. Goslow 1835), 51*a*; comp., however, Hadassi, Alph. 323[1] (119*b*). The legitimacy of David (descendant of Ruth the Moabitess) they save by asserting that Deut. 23, 4 refers only to those who do not embrace Judaism.

Schorr (החלוץ, IV, 43) claims that Maimonides is inconsistent in considering (איסורי ביאה, 12, 18; not 12, 9) the law of עמוני ולא עמונית as תלבה לעשה מסיני as this law is disputed, and quotes Yebamot 8, 4; ואם לדון יש תשובה and Tosafot, *ib.*, 77*b*, *s. v.* תלבה. Schorr apparently overlooked the fact that ואם לדון and Tosafot by him quoted refer to the question of מצרית ואדומית and have nothing to do with the law of עמוני ולא עמונית.

was unmarried or a widow. See Hadassi, Alph. 281 ; Mibḥar, Lev. 34*a*, and Deut. 17*a* and טירת כסף, *ad loc.*; בתר תורה, Deut. 24*a* (but see גן עדן, 147*d*). So also אדרת אליהו, 92*b*: ולכן אמרו חכמינו בשבויה שהיא אלמנה .... לא לפי דעת בעלי הקבלה שאמרו שאין אישות לנוי; so also Abraham b. Josiah Jerushalmi in his אמונה אמן (Goslow 1846), 24*a*. Samuel al Magrabi (MS. 222*a-b*) states: דע כי זה מאמרו בעשרת הדברים לא תנאף ינוץ אסור כל אשה בעלת איש אם הוא מאנשי הדת או מולתם מהאיסות.... ומי יתלה את ענינו ונפשו באשת יפת תאר ובכפור הכתוב עליה ואמר אולי יהי אישה עודנו בחיים יאמר לו זאת התליה אין בה טענה חזקה כי אנשי זו העיר אולי נדהרנו .... וגם כי בוראי יהי חקירה על זה דענין קודם ההתחברו עם האשה הנוברה למען יעשה כפי חפץ הכתוב. That this is also the view of Philo was shown by Ritter, 75.

9. The penalty of adultery with a married woman is according to Tradition (Sanhedrin 10, 1; Sifra קדושים, 9 (ed. Weiss, 92*a*) strangulation. Many Karaites, however, hold that the law of Deut. 22, 24 applies not only to the betrothed, but also to a married woman; the punishment being stoning in both cases. So Samuel al-Magrabi speaking of adultery and its punishment says (MS., 6*a*): ואם יאמר אומר איך הרגתם יאמר לו הרגתם באבנים כי ידענו זה מאמרו על המאורשה והתאתם את שניהם אל שער העיר ההוא וסקלתם אותם באבנים ומתו כי לא הפריש בין הבעולה והמאורשה במשפט כי המאורשה נקראת אשת איש; see also L. Cohn, *Des Samuel al-Magrebi Abhandlung über die Pflichten d. Priester u. Richter*, Berlin 1907, 10, and Mibḥar on Lev. 18, 20 (34*a*), and טירת כסף, *ad loc.*, letter רלב: וגם בבת ישראל אשת איש הנואפת בין בעולה ... בין מאורשה עשתן אחד שהרי גם המאורשה נקראת אשת איש; comp. also בתר תורה, Lev. 58*b* and גן עדן, 194*d*. That this is also the view of Philo is evident from the fact that he

sets death by stoning even for the *unmarried harlot*;[101] see II, 308, where he says: *παλιν πορνην κατα τον ιερον λογον ου παραδεχεται η πολιτεια ... Ως λυμη ουν και ζημια και κοινον μιασμα καταλυεσθω.*[102]

[101] See Ritter's comment on this law of Philo (p. 92); but see Book of Jubilees 20, 4 which also seems to punish unchastity of an *unmarried* woman with death (by burning, in accordance with Gen. 38, 24). The early Karaites also considered unchastity of a נבועה to be ניאוף; see Salmon b. Jeroḥam quoted by *Pinsker*, II, 62: באשת עמיתך וזה : ומלל לא תנאף כדרך חריבונין; comp. also the opinion of Saul b. Anan quoted there (the authenticity of the מקרמא is, however, disputed; comp. also Poznański, אוצר ישראל, VI, 88*a*). See also the Samaritan reading of Deut. 23, 18: לא תהיה קדשה (comp. Klumel, *Mischpatim*, p. VI). See also Brüll, *Jahrbücher*, III (1877), 39, n. 104. It is, however, possible that the Karaites, in fixing stoning as the penalty for adultery, were influenced, as in many other instances (Steinschneider, *Beschneidung d. Araber u. Mohammedaner*, 26-7; *id.*, *Polemische Litcratur d. Juden*, 398, n. 1; Wreschner, 41, 44), by the Mohammedan law which also punishes adultery with stoning; comp. *ZDMG.*, LIII (1899), 161.

[102] Noteworthy in this connection is the agreement between the view held by the earliest Karaite authorities (Anan and Benjamin Nahawendi) and the practice in vogue among the Alexandrian Jews in the first century B. C. I refer to Tosefta Ketubbot 4, 9; Baba meṣi'a 104*a*; p. Ketubbot 4, 8: כשהיו בני אלכסנדריא מקדשין נשים אחר (or אחר) בא והוציאה מן השוק which seems to indicate that the בני אלכסנדריא considered betrothal not so binding as נישואין (A. Brüll, *Fremdsprachliche Redensarten in den Talmuden u. Midraschim*, Leipzig 1869, 32, note, wrongly translates this passage: "Wenn die Alexandriner sich Frauen angelobten, nahmen sie sie *gerade von der Strasse weg*."). Büchler (*Festschrift zu Israel Lewy's siebzigstem Geburtstag*, Breslau 1911, 123, n. 3) justly remarks: "Vielleicht war hierin hellenistischer Einfluss wirksam" (Büchler, *l. c.*, thinks that the words (or לביתי) לכשתכנסי לחופה were inserted in the שטר כתובה to make the ארוסין unbinding. But, then, what was the purpose of the ארוסין and of the כתובה?). Philo also states (II, 311) that there are many who do not consider unchastity with a betrothed woman to be adultery, though he himself agrees with Tradition (comp. Frankel, *Grundlinien d. mos.-tal. Eherechts*, XXIV ff.) that bethrothal is as binding as marriage (*ib.*, and II, 229). See also p. Ḥagigah 2, 2: היו בני ירושלים כותבין : מירושלים הגדולה לאלכסנדריא הקטנה : עד מתי ארוסי יושב אצלכם where ארוסי (p. Sanhedrin 6, 6 reads: בעלי, but see Halevy, דורות הראשונים, Ic, 478, note) is perhaps an allusion to the view of the בני אלכסנדריא

10. Philo (II, 310) states that violation of a widow or divorced woman is a crime approaching adultery and the court shall decide upon the punishment whether it be physical chastisement or pecuniary fine.[99] Tradition, as Ritter (90-91) observes, makes no distinction between a divorced woman or widow and a woman who has never been married. A view similar to that of Philo is held by the Karaites, some of them even making carnal intercourse with a widow or divorced woman a *capital* crime while most

concerning אירסין as not being binding. This view of the Alexandrian Jews was held also by the earliest Karaites who maintained that the betrothed can sever their connections without a writ of divorce and that, in general, betrothal does not have the force of marriage. See Anan (כ"מ, ed. Harkavy, 118) קא אמא : כי יקח איש אשה ובעלה אלמא אי לא בעלה לא צריך כפר כריתות ובמדרש כניא ליה למפטרה; so also Benjamin Nahawendi, משאת בנימין, 5b: עלמה מאירסת דין בעדים שלא אירס בתן בלנם המקרא שני כי יקח איש אשה ובעלה והוא לא בעולה; so also Hadassi, *Aṣḥ.* 365 (1:19); comp. also עדן, 154c.

Geiger, relying on the view of Beth Shammai: אין מתאנין אלא אירסין (Yebamot 13, 1), claims that the older halakah distinguished in a similar manner between ארוסין and נשואין (*Jud. Zeitschr.*, II, 97; *Nachg. Schr.*, V, Heb., 162). As the marriage of a minor by her mother or brothers is only a *Rabbinic* institution, the view of Beth Shammai concerning מיאון does not prove much. Hadassi, *Aṣḥ.* 250c (96b) and 334c (123a) falsely states that according to the Rabbanites a minor given to marriage by her *father* (Deut. 22, 16) is free to annul her marriage through מיאון and reads in Yebamot 108a: אי אפשי בקידושין שקדשוני אבי אי והו מיאון .. ואמי ! ... (Holdheim, מאמר האישות, 53, note, erroneously ascribes this view to Elias Bashyazi; see to the contrary, his אדרת אליהו, נשים, ch. 21. For another misrepresentation of a traditional law by Hadassi see above, note 96; see also Bacher, *MGWJ.*, XL (1896), 21, n. 5.

[99] Büchler's suggestion (*MGWJ.*, L (1906), 674, note) that this law of Philo goes back to the more ancient view (represented by Beth Shammai) allowing divorce only in case of the wife's adultery and considering the divorced woman to be still to some extent an אשת איש, is not plausible as it does not account for Philo's view concerning אלמנה. Moreover, Philo and the Karaites do not share the view of Beth Shammai and allow divorce for any cause. See, for Philo, Ritter, 70, note 1 and, for the Karaites, above.

of them are, like Philo, satisfied that a special penalty be imposed on the offender, such as the court may deem best. See Hadassi, Alph. 278: וזנות חלק הנ' הוא הזונה עם האלמנה ... או עם הנרושה גדול עונו ומעלו ... ויותר מחמירים עליו משפט מות כי הן נשי איש תקראנה שנ' אשת נבל הכרמלי תאמר תורתך: יען כי הלא נבל מיומים רבים מת ועוד היתה אשת נבל: וכן שאמר אשר ינאף את אשת איש וגו' בין שהוא חי בין שהוא מת כי בא עליה בלי צווי ותנאי אלהיך בן זאת אלמנה נרושה הן נשי פלוני נשי איש וגרש או מת אסורות והבתולה; so also נן ערן, 158c: וחמורות הן בלי תנאי ואירושי איש שהיא נרושה או אלמנה אף על פי שאינה שבובה מרבית החכמים דנו אותן הבא עליהן כדין הבא באשת איש שהוא מחויב מות...; so also Samuel al Magrabi (MS. 86b): ונם אמר קצת מהחכמים ז"ל כי האלמנה והנרושה נכנסים נם הם בזאת האזהרה [לא תנאף] אם יתעלל בהם בלא קידושין ובדעתו כי הישוכב מנאף ויחויב מיתה.

11. Tradition (Soṭah 1, 1; Sifre on Num. 5, 13) makes warning by husband and subsequent סתירה of wife with the man against whom she has been warned condition precedent to subjection of the woman to ordeal of Num., 5, 15 ff.[104] Philo, speaking of this law (II, 308), says that in case the husband suspects his wife of adultery they are to bring the matter before the court in the Holy City (comp. Soṭah 1, 4) and if the court is undecided the woman is to submit to the ordeal; Philo, evidently, not considering necessary suspicion of a particular man, warning (קנוי) and סתירה.[105] This is also the view of the Karaites. See Hadassi, Alph. 328, end and 230; Mibḥar, Num. 5a: כתר תורה, Num. 7a; so also נן ערן, 157b: ואין הטעם כרעת בעלי

[104] One of these must be before witnesses (Soṭah 1, 1). The accepted norm (Maim., סוטה, 1, 1-2) requires witnesses for both.

[105] Ritter (pp. 81-85) discusses this law as given by Philo; he fails, however, to notice this essential deviation of Philo from Tradition.

הקבלה שאמרו שנסתרה כשיעור ביאה ואומרים שצריכה עדי קנוי ועדי סתירה ואז ראוי להשקות ...[106]

12. Tradition takes Deut. 22, 20: אם אמת היה הדבר to mean that in case adultery *during betrothal* has been established by the testimony of *witnesses*, penalty is death (v. 21) in accordance with Deut. 22, 24 (Sifre, *ad loc.*; Ketubbot 46*a*; comp. Frankel, *Der gerichtliche Beweis*, 49). Philo, in his exposition of this law (II, 313), says that if the husband's charge be found true, the parents of the woman are guilty of having deceived the husband at the time of the *betrothal*. Philo, evidently, held that the accusation of the husband, whose substantiation involves death, was *unchastity before betrothal*.[107] This is also the view of most of the Karaites. See Hadassi, Alph. 366 (141*b-c*) that the mere absence of the בתולים is sufficient to convict her: "חייבים אב ואם שלה להכין על היצוע שמלה .... "טענתו עוד אם לא יביו האם והאב או הנמצאים בעת ההיא את השמלה על המטה וחוא צועק ומניד בבעילה ראשונה כי לא מצאתי בתולים לנערה ..... כיון שמבקשים את השמלה ולא היא נמצאת בסקילה חייבת היא הנערה : טעמו שאמר : לא נמצאו בתולים לנערה : והוציאו את הנערה ; see also Alph. 365 (140*c*) : "דרוש ידרשו הדיינים ואם יש שמלה ופרשו השמלה וגו' והאמת יגידו ... ואם אמת היה הדבר לא נמצאו לה בתולים אם מוכת עין היא או מכל מכה או מחולי ועדים על זה יעידו ... ואם אין

[106] In case the suspected woman refuses to submit to this ordeal she is, according to Tradition (Soṭah 1, 3), to be divorced and forfeits her dowry. Some Karaites consider such refusal *prima facie* evidence of her guilt and say she is to be put to death as an adulteress; see אדרת אליהו, 98*a*: אמנם אם באה לנקות עצמה ומאנה בשתיה נהרגת; comp. *ib.*, 98*b*. All Karaites agree that in case the woman confesses her guilt, it is sufficient to convict her; see Mibḥar, Num. 5*a*: שוברת כתובתה ויוצאת [שוינתה] ואם חודית ולדעת חכמי הקראים נהרגת והוא הנכון כי פיה כמאה עדים; comp. also כתר תורה, Num. 7*b*; גן עדן, 156*d*; אדרת אליהו, 98*b* and above, note 82.

[107] See *Werke Philos*, II, 207, n. 3. Ritter (p. 77) overlooked this deviation of Philo from Tradition. For the view of Josephus, see Weyl, 87, 105.

זה ולא זה מחויבת היא סקילה כדין תורה. See also Mibḥar, Lev. 38*b*; comp. טירת כסף, *ad loc.*: שהרי מצינו גם בבת ישראל דין ... כזה המוציא שם רע על בתולת ישראל ואם באמת לא נמצאו בתולים לנערה חייב לה הבתוב סקילה בפתח בית אביה בלי הסניל תנאי אם זונתה קודם הארושין או אחר הארושין;[108] so also *ib.* to Mibḥar, Deut. 19*a*, letter 77. So also Samuel al Magrabi (Ms., 97a): ואמר קצתם כי לא תהרג אלא בשני עדים עליה בזנות וזה רחוק מימאמר הבתוב כי הבתוב יגוש זולת זה. The later Karaites agree with Tradition that *negatio virginitatis* is not *prima facie* evidence of her guilt. See אדרת אליהו, 96*ab*: ואם תביא עדות שזונתה או נאנסה קודם הארושין אין לה מות. אמנם אם לא תביא נחלקו החכמים. מהם אמרו והם הרוב שאין לה משפט מות אם לא יעידו שזונתה אחר הארושין ... וקצתם אמרו שבכל זמן שלא תביא ראיה שזונתה קודם הארושין היא בחזקת שזונתה אחר הארושין וחייבת

[108] Related to this Philonian-Karaite interpretation of Deut. 22, 20 is the Karaite interpretation of Lev. 21, 9. Tradition refers this law to a betrothed or married daughter of a priest (Sifra, *ad loc.*; Sanhedrin 50*b* ff.; Ps.-Jon., *ad loc.*). The Karaites maintain that this law—שרפה for unchastity in a priest's daughter—refers also to the unmarried. See Hadassi, Alph. 330 (121*d*); Mibḥar, Lev. 38*b*: וכרעת הקראים בפנויה הבתוב מדבר ...; so also בתי תורה, Lev. 58*b*. Samuel al-Magrabi (L. Cohn, *Des Samuel al-Magrebi Abhandlung über die Pflichten d. Priester u. Richter*, 9) even asserts that this law applies also to בן כהן guilty of unchaste conduct with woman married or unmarried; comp. also Mibḥar, Gen. 60*a* and טירת כסף *ad loc.* and to Mibḥar, Lev. 34*a*, letter 232. This is also the view of Philo (? Hoffmann, *Leviticus*, II, 90) and Josephus (*Ant.*, IV, 8, 23; comp. Ritter, 81; P. Grünbaum, *Die Priestergesetze bei Flavius Josephus*, Halle 1887, 18, n. 2; Weyl, 106). Comp. also B. Beer, *Das Buch d. Jubiläen u. sein Verhältniss zu den Midraschim*, Leipzig 1856, 58. The view of Büchler (*MGWJ.*, L (1896), 681, n. 2) that this was also the view of R. Eliezer (Sanhedrin 51*a*) is very improbable; comp. also Weiss, *Dor*, I, 151.

For the mode employed in the execution of בת כהן (באש תשרף; Lev. 21, 9) which, according to Rab Joseph (Sanhedrin 52*b*), was taken by the Sadducees (so also Josephus, *Ant.*, IV, 8, 23) literally (comp. Brüll, בית תלמוד, IV, 7 ff.; Weiss, *Dor*, I, 151; Büchler, *l. c.*, 549 ff., 557 ff.) the Karaites disagree among themselves; see Samuel al-Magrabi, *l. c.*; comp. also Hadassi, Alph. 324*b*.

משפט מות; the later Karaites thus disagreeing among themselves only as to the mode of proof of the woman's guilt or innocence *after* betrothal.[109]

13. Num. 36, 6-10 provides that when a man dies without male issue and his daughter inherits his property, the heiress is to marry only within her tribe so that the allotment of one tribe might not pass over to another. According to talmudic interpretation (Baba batra 120*a* ff.; comp. Pseudo-Jonathan on verse 6: דא פתנמא דפקיד ה' לא לדריא דעתידין למיקום בתר גילוי ארעא אלהן לבנת צלפחד and Geiger, *Urschrift*, 447) this rule applied only to the "generation of the conquest," while according to Samuel (B. b. 120*a*) even in the case of the daughters of Zelophehad it was not a command, but merely counsel: עצה טובה הישאם הכתוב (but comp. Ritter, 97, n. 1, and Ibn Ezra, *ad loc.*, v. 8).

Philo[110] states that in case a daughter inherits she is to marry one of her *relatives* (based perhaps on Num. 36. 11), in the absence of which she must at least not marry out of her tribe, thus applying the law of Num. 36, 6-10 to all generations.

[109] According to the scholion of Megillat Taanit (ch. 4) the Boethusians interpreted ופרשו השמלה literally (ממש). Rapoport (דברי שלום ואמת, 14); Geiger (*Urschrift*, 148) and Ritter (133 ff.; comp. Büchler, *l. c.*, 680, note; comp. Weiss, *Dor.*, I, 117) consider this report unauthentic as this view is held also by R. Eliezer b. Jacob (Sifre, II, 237; Ketubbot 46*a*); see, however, Halevy, דורות הראשונים, Ic, 415-18.

[110] See Treitel, *MGWJ.*, XLVII (1903), 409. Philo explains also the law of *yibbum* (Deut. 25, 5-11) as a means that the allotment of one might not pass over to another (II, 443; Ritter, 69, n. 3 errs in asserting that Philo mentions nowhere the law of יבום) which is also the prevailing view among the later Karaites (comp. Poznański, *REJ.*, XLV (1902), 62). Josephus also considers the law of Num. 36, 7 as applying to all times (*Ant.*, IV, 7, 5; comp. Ritter, 96-7). This view is shared also by the author of Tobit 6, 12-13; comp. M. Rosemann, *Studien zum Buche Tobit*, Berlin 1894, 3 ff. and F. Rosenthal, *Vier apokryphische Bücher*, Leipzig 1885, 116, note.

The Karaites, like Philo, apply the law of Numb. 36, 6-10 to all times; see Hadassi, Alph. 260 (99*a*); Mibḥar, *ad loc.* (33*a*), and כתר תורה, Num., 50*b*: וכל בת יורשת נחלה בא להתמיד הדבר לדורות על כן לא יתכן מאמר בעלי הקבלה ... עד שאמרו שהמצוה לשעתה אלא אה"נ תכוס הנחלה; comp also גן עדן, 171*b*; so also Samuel al Magrabi (MS., 263*a*): ודע כי הבת מהנקבות אם יתהוה להן ירושה מנחלה ארץ לא יכשר להן בי יהיו לנשים מזולת השבט שלהן למען לא יתהוה להן זרע מזולת השבט וירש אותן אחר מותן ותצא הנחלה הנזברה לזולת השבט ...

14. The law of Lev. 21, 2-3 enjoining the priests not to defile themselves by approaching a dead body says, "But for his kin that is near to him...." (v. 2*a*), כי אם לשארו הקרוב אליו.

The talmudic interpretation finds in the words כי אם לשארו support for the tradition that a priest is to defile himself by approaching the body of his wife[111] (Sifra, *ad loc.*: אין שארו אלא אשתו שנ' שאר אביך הוא; Yebamot 22*b*). The Karaites, rejecting this interpretation of שארו,[112] forbid the

[111] See Maim., אבל, 2, 7: ואינו מטמא לה אלא מדברי סופרים; comp. commentaries and לחם משנה, *ib.*, 2, 1. Weiss (*Dor*, I, 46, note) quotes: ושימאוהו בעל כרחו ... (Zebaḥim 100*a*; Sifra, Emor, 1; Semaḥot, ch. 4) as proof that the law of טומאת כהן לאשתו was not universally accepted. Weiss apparently overlooked the fact that the wife of יוסף הכהן died בערב הפסח (*l. c.*) and defilement would have barred him from participation in the קרבן פסח, whereas טומאת כהן לאשתו is, according to many, only רשות; see Zebaḥim, *l. c.*; and Tosafot Soṭah 3*a*, *s. v.* לה; comp. Büchler, *Der Galiläische Am-ha-Arcṣ*, 205 and n. 2.

[112] Most of the Karaites reject also the talmudic interpretation of לשארו in Num. 27, 11 (Baba batra 8, 1; Sifre, *ad loc.*; Maim., נחלות, 1, 8 accepts the view (Ketubbot 84*a*) that ירושת הבעל is only מדברי סופרים) and hold that the husband does not inherit his wife; see Mibḥar, Num., 37*a*; גן עדן, 170*d* ff.; כתר תורה, Num. 42*a*; אפריון, 28; לבוש מלכות, 50. Mordecai b. Nisan (לבוש מלכות, *l. c.*) states: ואמרו כי מאמר וירש אותה היא מצוה בפני עצמה וחרצון שהבעל יורש את אשתו ..... והם החליפו הכתוב מעיקרו ...

11

defilement of a priest in case of wife's death; see Mibḥar *ad loc.* (38*a*) (comp. טירת כסף, *ad loc.*: כי אם לשארו הקרוב אליו : לא יתכן להיות אישתו ומנגד לבעלי הקבלה שאמרו אין שארו אלא אישתו והתירו לכהן ליטמא באישתו); so also כתר תורה, *ad loc.* (58*a*): ובעלי מקרא אמרו יאסור ליטמאות באשתו; comp. also Hadassi, Alph. 206ר and אדרת אליהו, 171*a*; Philo (II, 230) speaking of the law of Lev. 21, 2-3 mentions the six blood-relations, enumerated in these verses, as those for whom the priest is to defile himself, evidently excluding like the Karaites the wife.

15. Philo and the Karaites also agree in the interpretation of Lev. 21, 14. Philo (II, 229) interprets this law to mean that the high-priest must choose his wife from priestly lineage.[113] That this is also the interpretation

(?) ואפילו חכמיהם האחרונים אינם מסכימים לפירוש זה; Benjamin Nahawendi agrees with Tradition (ס"תמו לענן, ed. Harkavy, 179). Hadassi (Alph. 365ח (140*a*); 367ח (142*c*) holds that the husband inherits his wife if they have children; Samuel al-Magrabi (MS., 269) states: ויתרץ בי התכמים נחליפו בענין : מי שם ירושתה לאישה אם היא תחת ממשלתו ורשותו והם בני משנה וקצת מחכמינו ז"ל ומהם והרבים מחכמינו ז"ל לא ראו כבן; comp. Weiss, *Dor*, I, 46, note.

[113] See Ritter, 73, n. 2 and Hoffmann, *Magazin*, VIII (1881), 56. It is, however, possible that Philo recorded here a custom which he believed to be a law. Büchler (*Die Priester u. d. Cultus*, 88-9; comp. also Berakot 44*a*; Pesaḥim 49*a*; Rashi, Yebamot 84*b*, *s. v.* מאי) has collected instances which tend to show that also ordinary priests married only daughters of priests (comp. also Grätz, *MGWJ.*, 1879, 499 and Krauss, *JQR.*, VIII, 671). The custom to marry within the family was considered praiseworthy even for non-priests and is commended by the Rabbis; see Tosefta Ḳiddushin 1, 2; Yebamot 62*b*; p. Ḳiddushin 4, 4; Gen. rabba 18, 5; see also Book of Jubilees 4, 15-33; 8, 5-6, 9, 7; but see Kohler, *JQR.*, V (1893), 406, note); comp. also Tobit, 6, 12-3 and *MGWJ.*, 1879, 507, 510 ff. For the view of Josephus see M. Zipser, *Des Flavius Josephus Werk: Gegen Apion*, Wien 1871, 30; Ritter, 73 and P. Grünbaum, *Die Priestergesetze bei Flavius Josephus*, 29-30.

To the Karaite authorities mentioned by Geiger (*l. c.*) that the high-priest is to marry the daughter of a priest may be added Jacob B. Reuben, ספר העשר, on Ez. 44, 22 and Samuel al-Magrabi (ed. Cohn, 12, l. 24 ff.; Cohn, *ib.*, note 111 remarks: "Diese Ansicht ist nur karäisch vielleicht nur des Authors"!).

of most Karaites was already observed by Azariah de Rossi (מאור עינים, ed. Wien, 68*a*) (comp. Geiger, *ZDMG.*, XX (1866), 561 ff.; *Nachgelassene Schriften* III, 311-14 V, Heb., 133 ff.; *Jüd Zeitschr.*, VI, 265).

CEREMONIAL LAWS

16. Philo, speaking of the First of the seventh month (II, 295), says that it is called Day of Trumpets, as trumpets are blown that day at the offering of the sacrifices. Their sounding is a commemoration of the giving of the Law. The trumpet being an instrument of war, symbolizes the war between the different forces of nature and humanity, for the pacification of which man must be greatful to God. Philo makes no mention of the traditional interpretation of יום תרועה (Num. 29, 1), i. e. that the "Shofar" (Sifra on Lev. 25, 9; see Hoffmann, *Leviticus*, II, 247) is to be sounded everywhere (except on sabbath; R. ha-shanah 29*b*) in Israel on that day and seems to have identified יום תרועה in Num. 29, 1 with ותקעתם בחצוצרת, the blowing of trumpets every holiday at the offering of sacrifices (Num. 10, 10)."[314] The Karaites also reject the traditional interpretation of תרועה and explain it as loud praises to God (Hadassi, Alph. 225; 364 (136*a*); גן עדן, 58*a* ff.; כתר תורה: Lev. 67*a*; אדרת אליהו, 48*a*; אפריון, 13; לבוש מלכות, 48-9) or

[314] Nor does Josephus (*Ant.* III, 10, 2) mention the law of תקיעת שופר; comp. also Book of Jubilees, ch. 6. The Samaritans, like the Karaites, reject the traditional interpretation of יום תרועה, differing among themselves as to its meaning; see Geiger, *ZDMG.*, XX, 570; Hanover, *Das Festgesetz der Samaritaner nach Ibrahim ibn Jakub*, text, pp. X-XI and *ib.*, 28, 68. Some Karaites take יום תרועה to mean the blowing of any instrument on that day (Mibḥar, Lev., 42*b*; גן עדן, *l. c.*). Samuel al-Magrabi (MS. 410) states that תרועה is the sounding of *ḥaṣoṣrot* by priests and, in absence of authenticated priests and *ḥaṣoṣrot*, not to be observed now.

as the sounding of חצצרת on every holiday (comp. גן עדן, 58*d*; Hadassi, 136*a*).

The Karaites also reject the traditional interpretation of ולקחתם לכם ביום הראשון (Lev. 23, 40) (see Josephus, *Ant.* III, 10, 4) and claim that the "four species" are for the construction of the "booths" mentioned in verse 42, deriving support for this view from Nehem. 8, 14 ff. See גן עדן, 56*ab* (where the views of Anan, Benjamin Nahawendi, and Daniel, al Ḳumsi are quoted); Hadassi, Alph. 168 (64*b*); 225-6; 364 (136*a*); Mibḥar, Lev. 43*a*; כתר תורה, Lev. 67*b*; אדרת אליהו, 47*b* (where the opinion of Jepheth b. Ali is quoted); Pinsker II. 96; אפריון, 14; לבוש מלכות, 34. 49.[115] Philo, speaking of the Feast of Tabernacles (II, 297), makes no mention of the law of "four species." Philo, as Treitel (*MGWJ.*, 1903, 512) suggests, must have understood verse 40 not as a separate commandment but,[116] like the Karaites, as prescribing material for the booths.

17. Tradition (Zebaḥim 5, 8; Maim., בכורות ה', 6, 4) interprets Lev. 27, 32 to mean that the animal-tithe, מעשר בהמה

[115] Some Karaites agree with Tradition in the interpretation of ולקחתם לכם; see גן עדן, 55*b* and the opinion of Joseph ha-Kohen (*l. c.*, 55*d*; כתר תורה, Lev. 67*b*; אדרת אליהו, *l. c.*).

The Samaritans agree with the Karaites; see Geiger, *ZDMG.*, XX, 544; Hanover, *l. c.*, 16 and 62 (Hanover, 31, n. 2, relying on the words of Ibn Ezra on Lev. 23, 40: והצדוקים אמרו כי מאלה תעשו סוכות והביאו ראיה מנחמיה, believes that the Sadducees shared this view, unaware that by והצדוקים Ibn Ezra refers, as usual, to the Karaites (see above, note 10); see, how. M. Duschack, *Josephus Flavius u. d. Tradition*, 27 and Grätz, III, note 10). Josephus agrees with Tradition (*Ant.*, III, 10, 5); so also the Falashas (Epstein, *Eldad ha-Dani*, 162). See also Book of Jubilees 16, 4 and B. Beer, *Buch d. Jubiläen*, 47.

[116] It must, however, be pointed out that Philo (*l. c.*), in contradistinction to Josephus (comp. M. Olitzki, *Flavius Josephus und die Halacha*, p. 25, n. 31 and p. 50), does not seem to require the construction of *special* booths for the Feast of Tabernacles.

like the "second tithe," is to be eaten by the owner within the walls of Jerusalem. Philo (II, 234, 391; comp. Ritter, 123; Driver, *Deuteronomy,* 170, note is to be corrected accordingly) states that the animal-tithe is to be given to the priests.[117] The Karaites agree with Philo. See Mibḥar, Lev. 51*a;* בתר תורה, Lev. 76*b.*

18. Tradition applies the law of Lev. 22, 19 (תמים) to animal sacrifices only (Sifra to Lev. 1, 14; Menaḥot 6*a* and parallels). Philo, as is evident from the reason given by him for the law of תמים (II, 238) holds that תמים refers also to תורים ובני יונה. The Karaites agree with Philo. See Mibḥar, Lev. 3*b,* ואמרו בעלי הקבלה אין המומין פוסלין בעוף .... והנכון שאלו הפרשיות למדות זו מזו; see also בתר תורה, Lev., 5*a.*

19. Philo (II, 256; comp. *Werke Philos,* II, 93, n. 1) states that all the lights of the sacred candle-stick (מנורה) were extinguished in the morning. According to Tradition (Tamid 6, 1; Sifre on Num. 8, 2; Tosefta, Soṭah 13, 7; Yoma, 39*a*[118] and parallels; comp. also Naḥm. on Ex. 27, 20 and Tosafot Menaḥot 86*b s. v.* ומנה; comp. M. Duschak, *Josephus Flavius u. d. Tradition,* Wien 1864, p. 4, which is to be corrected accordingly) one light was left burning the whole day (נר המערבי). Josephus (*C. Ap.,* I, 22) also states that the lights were never extinguished (see *Ant.,* III, 8, 3 that *three* lights burned in the Temple during

[117] So also Book of Jubilees 32, 15 and Tobit 1, 6. Ritter, 123 overlooked that Philo (II, 234) disagrees with Tradition (Bekorot 9, 1) also in requiring מעשר בהמה to be given from all domestic animals. See also Schechter, *Jewish Sectaries,* II, 4, ll. 13-15; comp., however, Hadassi, Alph 205.

[118] See Tosefta Soṭah 13, 7; Yoma 39*a;* p. *ib.,* 6, 3: ארבעים שנה שמשם שמעון הצדיק .... והיה נר מערבי דולק [כל הלילה] מכאן ואילך ארבעים דולק ארבעים כבה; but see Weiss, *Dor,* I, 82, note 1, that this refers to שמעון הצדיק who lived about forty C. E.; see Meïm., תמידין ומוספים, 3, 12 and כ"מ *ad loc.;* comp. ת' הרשב"א, ed. Wien, No. 309.

daytime!) The Karaites hold, like Philo, that no lights burned in the Temple during the day. See Mibḥar, Exod. 57*a* and כתר תורה, Lev. 85*b*.

20. The Karaites reject the ancient traditional law[119] that vows made and oaths taken without due consideration of the circumstances involved may be annulled by a court as those of a daughter by her father (Num. 30, 5-6) and that of a wife by her husband (*l. c.*, v. 7 ff.). See Hadassi, Alph. 139-141, 364 (135*a*); Mibḥar, Num. 29*a*; לברש מלכות, 51; comp. also Maim. commentary on Nedarim, ch. 10, end; ... ישזה אצלינו בערי המערב ר"ל היתר השבועות מעשים בכל יום לפי שבמקומינו אין נובעין בהן מים הרעים ר"ל המינות; and *id.*, משנה תורה, הל' שבועות, 12, 12. This seems to be also the view of Philo who seems to express his objection to the law of annulment of vows by the statement (II. 273; comp. *Werke Philos*, II, 112, n. 2) that *"no man is competent to heal vows."*[120]

[119] Weiss (*Dor*, I, 81) believes that the law of התרת נדרים was inaugurated in the time of Simon the Just. This opinion of Weiss is based on his view (*l. c.*, 80; so also Geiger, *Urschrift*, 31-2) that שמעון הצדיק did not favor the making of vows; see, however, Rapoport, נחלת יהודה, 23 ff. We do not know whether the law of התרת נדרים was even contested by the Sadducees; comp. p. Berakot 7, 2; Gen. rabba 91, 3. Schechter (*Jewish Sectaries*, I, XVIII; comp. *ib.*, p. 16, ll. 7-8 and notes) believes that the sect which he designates "Zadokite" (see above) held that vows cannot be annulled; comp. also K. Kohler, *American Journal of Theology*, 1911, 425-6.

[120] The later Karaites accepted, with slight modifications, the law of התרת נדרים; see Kaleb Afendopolo's appendix to אדרת אליהו, Odessa 1870, 227*a* ff. It is, however, possible that in rejecting התרת נדרים the early Karaites, as in several other instances, turned into a law the general sentiment among the Babylonian Jews during the Gaonic period against the annulment of vows. Jehudai Gaon (quoted by Naḥshon Gaon) states: דאנן לא גרסינן נדרים ולא ידעינן לאסר ולהתיר בה לא נדר ולא שבועה; see הלכות פסוקות, ed Müller, No. 122; comp. *ib.*, Nos. 117, 120; חמרה גנוזה, Nos. 6, 44, 75; שערי תשובה, Nos. 38, 137, 143, 145-6; תורתן של ראשונים,

21. The Karaites agree with Philo also in the interpretation of לא תבשל גדי בחלב אמו (Exod. 23, 19; 34, 26; Deut. 14, 21) as prohibiting the seething of a kid or—by analogy—of any other animal in the milk of *its* mother. See Philo II, 399; comp. Ritter, 128.[121] See Hadassi, Alph. 240 (91*cd*); 360 (132*d*); Mibḥar, Exod. 47*b*; כתר תורה, Exod. 79*ab*.[122] לבוש מלכות, 41.

22. The law of Ex. 13, 13; Num. 18, 15 enjoins the redemption of the firstling of an ass with a lamb, and that, if the owner fails to redeem, the firstling is to be killed by having its neck broken. According to Tradition this law refers only to an ass but not to the firstling of any other unclean animal (Mekilta, *ad loc.*; Sifre on Num. 18, 15; Bekorot 5*b*). Philo makes this law apply to all *domestic*

ed. Horowitz, I, Nos. 12, 14; so also Sar Shalom Gaon: כך ראינו שאין שערי תשובה, No. 141: בדורות הללו מי שיבול להתיר נדרים וב"שב שבועות תשובות הגאונים, ed. Lyck, No. 37; see however, *ib.*, No. 11 end; שערי תשובה, No. 48 and איי הים, *ad loc.*).

[121] See Hullin 8, 1 ff.; Mekilta on Exod. 23, 19; Sifre on Deut. 14, 21. The Samaritans agree with Tradition; see Geiger, *Nachg. Schr.*, III, 303-4; Wreschner, *Intr.*; XXVI. For the view of the ancient Samaritans see Geiger, *l. c.*, 305-6 and *Nachg. Schr.*, IV, 66, 126. For the LXX see Frankel, *Vorstudien*, 183. The practice of the Falashas agrees with the view of Philo and the Karaites (Epstein, *Eldad ha-Dani*, 130, 173; Epstein, *l. c.*, 129-131 believes that this was also the view of Eldad ha-Dani; but see No. 35 of Eldad's Halakah, ed. Epstein, 121). Against the view of Rapoport ערך מלין, 101*a* (comp. Ritter, 128) that the law of בשר בחלב was not universally known in Babylonia even long after the destruction of the Second Temple see Halevy, דורות הראשונים, Ic, 128.

[122] For Anan's interpretation of לא תבשל גדי בחלב אמו see Harkavy, ס"תמ לענן, 152, n. 1. For other interpretations of this verse by some early Karaites see Hadassi, Alph. 240 (91*cd*); Jacob b. Reuben (Harkavy, *l. c.*, 155) and Ibn Ezra on Exod. 23, 19. Most of the later Karaites accept the traditional interpretation of לא תבשל; see Geiger, *Nachg. Schr.*, III, 303; comp. also כתר תורה, Exod. 79*a*; Samuel al-Magrabi, ed. Lorge, 20-22; אשרין, 24.

animals (II, 233; Ritter, 119 ff.).[122] This is also the view of the Karaites. See Anan (ed. Schechter, p. 7, ll. 8-15): טפי בה הי מ[שום דכתיב ופטר] חמור הטמאה (Num. 15, 18*b*) תפדה בישה טפי האכא הי לאדעך דעל כל ב[המה קאי] והאי דפרט התם בחמור מישום דכל בהמה טמאה [בכלל חמור] דכת' שורך וחמרך וכל בהמתך אמא מבהמה טהור[ה שור ומבהמה] טמאה חמר ואמא בתריה וכל בהמתך באלה [כללה ?] לבהמ[ה טהורה בהדי] שור ולבהמה טמיאה בהדי חמור ומישום הכי כת' וכל ב[המתך] לאדעך דעל כל פטר רחם דבהמה טמאה קאים; comp. *ib.*, p. 8, l. 15 ff. So also Hadassi, Alph. 204; כתר תורה, Exod. 35*a*: ופטר חמר : כי נראה שלא הקדיש מבהמות הטמאות כי אם פטרי חמור לבד וכן דעת בעלי הקבלה ובני מקרא אומרים זה הקש לכל בהמה טמאה.

[122] So also Josephus, *Ant.*, IV, 4, 4. As Olitzki suggests (*Flavius Josephus und die Halacha*, 29) this anti-traditional view of Josephus may be due to his desire to remove any suspicion that the ass occupied a favorable position in Jewish law. This may also account for the view of Philo. Philo omits the law of וערפתו (Exod. 13, 13; comp. Ritter, 120; Olitzki, *Magazin*, XVI, 178.). Nor do all the Karaites accept the literal interpretation of וערפתו; see the opinion of Sahl b. Maṣliaḥ quoted in Mibḥar, Exod. 19*b* (comp. Ibn Ezra, *ad loc.*). Aaron b. Joseph (Mibḥar, *l. c.* and Num. 17*b*) agrees with Tradition that only the ass is to be redeemed. Comp. also Weiss, Dor, I, 51.

The contradiction between Exod. 13, 2 (פטר כל רחם בבני ישראל באדם ובבהמה לי הוא) and Deut. 15, 19-20 (לפני ה' אלהיך תאכלנו) and between Lev. 27, 26 (לא יקדיש איש אותו...; the firstling is קדוש *ipso facto*) and Deut., *l. c.* (הזכר תקדיש...; the בכור is to be *declared* קדוש by the owner) led many Karaites to refer Deut. 15, 19-20 to בכור עדר of clean animals which, as they believe, in contradistinction to בכור פטר רחם is to be declared קדוש by the owner and, like the "second tithe," to be consumed by him within the walls of Jerusalem or redeemed; see Hadassi, Alph. 204-5; Mibḥar, Deut., 12*b*; כתר תורה, Deut. 19*a* (Ibn Ezra on Deut. 12, 17 refers to *this* Karaite view; Harkavy, ס"תמ לענן, 142, n. 16, is to be corrected accordingly). Anan tried to reconcile the above mentioned contradictions by claiming that the firstling whose conception and birth were while its mother belonged to an Israelite is קדוש *ipso facto* and to be given to the priests (Exod. 13, 2; Lev. 27, 26, Num. 18, 15), whereas the בכור who was owned by an Israelite only at the time of its birth is to be made קדוש by the

The Philonian halakah, in general, is a problem still to be solved. Philo lived in Egypt where as we now know from the papyri recently discovered in Assuan and Elephantine (Sayce-Cowley, *Aramaic Papyri discovered in Assuan*, London 1906; Sachau, *Drei aramäische Papyrusurkunden aus Elephantine*, 1908), the Jews were permanently settled in the sixth century B. C. (comp. Schürer, *Geschichte des Jüdischen Volkes*, III ⁴, 24 ff.).[120]

Alexander the Great transplanted many Jews into Egypt in 332 B. C. (Josephus, *Bell. Jud.* II, 18, 7; *Contra*

owner and belongs to him (Deut. 15, 19-20). See Anan's *Book of Commandments* (ed. Schechter, p. 6, ll. 7-18): וקא [א]מא לי הוא ואף על גב דלא מקדש [יתו]ם וכתם כל הבכור [אשר יולד בבקרך ובצאנך] הו' ת' לוי' אלהיך קא אמא אשר יולד לאדעך דעל בכור [דא]ת[ו]לודי ביני יש' קאים ולאו דמזדרע אזדרועי וקא אמא [תקדיש לה'] אלהיך דצרוכת לאקדושיה וקא אמא בתריה לפני ה' אלהיך [לאודע] לך (?) דהאי בכור דאתילודי הוא דאתיליד ביני יש' ולאו [דמזד]רע ביני יש' מיואתיה נאכלוה בבית המקדש ... וכת' אך בכור אשר [יבכר קא א]מא אשר יבכר ל' בבהמ' לאדעך דעל בכור דמן כד אזדרע [בקדוש]תא קאים ותינו בכור דמזדרע אזדרועי ביני יש' וקא אמא[לא יקדיש אי]ש איתו דלא צריך אקדושיה וכ' כל פטר רחם לכל בשר [וק]א אמא באדם ובבהמה יהיה לך קא אמא לך דבכר מזדרע [אזדרועי ביני] יש' לכהן יהבינן ליה; comp. also *ib.*, p. 8, ll. 15-26 and p. 9, ll. 9-10, 21 ff. Kirkisani alludes to this view of Anan (ed. Harkavy, 248) and states that the authority for this law of Anan was found in one of Jannai's liturgical compositions. Harkavy, *Studien u. Mittheilungen*, V, 107, note, is to be corrected accordingly.

[121] See also Rapoport, נחלת יהודה, 128-9; *id.*, ערך מלין, 100*b* ff.; Ritter, 6, 8-9. Herzfeld, *Geschichte*, III, 463; Frankel, *Vorstudien*, 10, and notes; *id.*, *MGWJ.*, 1852, 40.

On the Egyptian Jews and their relation to Palestine see the literature quoted by Schürer, *l. c.*, 147 ff., and in Sweet's *Introduction to the Old Testament in Greek*, Cambridge 1902, 3 ff. In the third and fourth centuries C. E. there were still some Amoraim in Alexandria; see p. Erubin 3, 9; p. Kiddushin 3, 14; comp. Frankel, מבוא תירושלמי, 77*a*. It may also be pointed out that Judah b. Tabbai, to whom the later Karaites (see above, note 4) ascribe the beginning of Karaism, lived in Alexandria; see p. Hagigah 2, 2; p. Sanhedrin 6, 6; comp. Frankel, דרכי המשנה, 34-5; Weiss, *Dor*, 128, n. 1; Halevy, דורות הראשונים, I*c*, 474 ff.

Ap., II. 4; comp. Schürer, *l. c.*, 35 ff.; 40). The city of Alexandria early became a great center of Jewish activity, second only to Jerusalem. The existence of the Temple of Onias did not affect the loyalty of the Jews in Egypt to the Sanctuary in Jerusalem (Frankel, *Einfluss*, 157; Schürer, *l. c.*, 147-8). Palestinian scholars often visited Alexandria (Rapoport, ערך מלין, 101*b*). The Palestinian interpretation of the Law and the practices in vogue there were not unknown to them (Frankel, *Vorstudien zu der Septuaginta*, 185-186; comp. Halevy, דורות הראשונים, Ic, 127, note; 129, note) and the influence of Palestinian exegesis is patent in that great monument of the Jews of Egypt, the Septuagint (Frankel, *Vorstudien zu der Septuaginta; Ueber den Einfluss d. paläst. Exegese auf d. alex. Hermeneutik; Ueber paläst. und alex. Schriftforschung;* but see Herzfeld, *Geschichte*, III, 548 ff.). Philo, the great representative of Egyptian Jewry, knew of the existence of an oral tradition and considered it as binding as the Written Law (see the references by Ritter, 14-5; comp. Neumark, *Geschichte d. Jüdischen Philosophie des Mittelalters*, II, Berlin 1910, 418, note; see, however, *Werke Philos*, II, 289, note).[125] He also visited Palestine and there saw the people living according to that Tradition (Grätz, *MGWJ.*, 1877, 436 ff.). How are we then to account for the interpretations and decisions in which Philo deviates from traditional halakah? Are such deviations subjective opinions of Philo?[126] Do they reflect the actual practices

[125] See also Ritter, 16-7. For Philo's *eruditio hebraica* see the references by Ritter, 10, n. 2 and by Schürer, *l. c.*, 699; comp. also L. Löw, *Ges. Schr.*, I, 7, 303.

[126] See Treitel, *MGWJ.*, 1903, 415; but see Ritter, 15-16.

in vogue among Egyptian Jewry[127] or do they go back to a peculiar tradition?[128]

But be this as it may, the fact, which I have attempted to demonstrate, that *in most of Philo's deviations from Tradition the Karaites hold the same view*, points to some kind of dependence of the latter on Philo, or to common descent from a particular tradition. The former view gains in probability from the following:

The Hellenic or Alexandrian method of interpretation of the Scriptures did not remain unknown to the Palestinian teachers of the law and the works and views of Philo found their way to the Palestinian schools.[129] Moreover, the general belief that Philo and his works were lost to the Jews of the Middle Ages until Azariah dei Rossi, about

[127] So Ritter 16-17; comp. *ib.*, 28, 63 ff., 90, 93; but see *Werke Philos*, II, 48, n. 2; 202, n. 3; 258, n. 1. Frankel (*Über palästinische u. alexandrinische Schriftforschung*, 32, nu. 6; *Einyuss*, 157 see *ib.*, 33, n. 9 and pp. 190-201) believes that Philo's exposition of the sacrificial ritual goes back to the practice of the Temple of Onias; comp. also Grätz, *MGWJ.*, 1877, 436; but see Ritter, 109, n. 2; 112.

[128] See L. Cohn, *Werke Philos* I, 14. The view of Büchler (*MGWJ.*, L (1906), 706; see also Lauterbach, *Jewish Encyclopedia*, X, *s. v.* Philo, 16*b*) that Philo's deviations from traditional halakah represent an earlier halakah (that of Beth Shammai) is still to be proved. Geiger who scanned Jewish literature and that of its sects for traces of ancient halakah took no account, as already remarked by Poznański (*Abraham Geiger, Leben u. Lebenswerk*, 372, n. 1), of Philo. Philo's deviations from Tradition cannot be brought into relation with Sadduceeism and the supposed ancient halakah related to it; comp. Rapoport, ערך מלין, 101*a*. Philo interprets ממחרת השבת like the Pharisees (Frankel, *Einfluss*, 137). He considers (II, 230) like the Pharisees (Menahot 65*a*) the קרבן תמיד a *public* offering; allows divorce without ערות דבר (Ritter, 70, n. 1) and seems to agree with the Pharisees also in the law of עדים זוממים (Ritter, 26, n. 1).

[129] See Freudenthal, *Hellenistische Studien*, I, 68 ff.; C. Siegfried, *Philo von Alexandria als Ausleger des Alten Testament*, Jena 1875, 278 ff.; Weinstein, *Zur Genesis der Agada*, II, 29 ff.; D. Neumark, *Geschichte der Jüdischen Philosophie des Mittelalters*, II, 70 ff., 84 ff.

the end of the sixteenth century, reintroduced him in Jewish literature, is now proved to be unfounded. The tenth century Karaite, Abu Yusuf al-Ḳirḳisani, in his work *Kitāb al-anwār wal-marākib* (written 937), speaks of a Jewish Sect named "the Magarites" (אלמגאריה). This sect, says Ḳirḳisani, sprang up before the rise of Christianity. The adherents of the sect make the biblical passages that speak of attributes of God refer to an angel who, according to them, created the world (ed. Harkavy, 304). Among them are the works of the "Alexandrine" (אלאסכנדראני) which are the best of the "Books of the Cave" (*ib.*, 283). The same author, speaking of Benjamin Nahawendi whom he considers the second founder of Karaism, says that Benjamin's belief that an angel created the world is similar to the view held by the Alexandrine (*ib.*, 314). Harkavy ingeniously suggested that these "Magarites" are the Egyptian Essenes, known as the Therapeutae. The "Alexandrine" whose works they so highly estimated is *no other than Philo* (*ib.*, 256 ff.) and Nahawendi's "Angel" goes back to Philo's "Logos" (comp. Poznański, *RÉJ.*, L, 1905, "Philon dans l'ancienne littérature judéo-arabe," where all the material is collected and discussed). The view that some of the works of Philo were known to the Jews in the eighth, ninth, and tenth centuries—the period of religious unrest among the Jews and the birth of Jewish religious philosophy—is shared by many scholars. See Bacher, *JQR.*, VII, 701; Hirschfeld, *ib.*, XVII (1905), 65 ff.; Poznański, *l. c.* (see *id.*, אוצר ישראל, III, 128*a*); Eppenstein, *MGWJ.*, LIV (1910), 200; D. Neumark, *Geschichte der jüdischen Philosophie des Mittelalters*, I. Berlin 1907, 128, 133, 560, 568; II, 372 and 466 ff. Among Philo's (the "Alexandrine's) works—which, as Ḳirḳisani informs

us, were eagerly studied,—might have been those that contain Philo's expositions of biblical laws; Philo thus influencing, not only the theological views of the first Karaite philosophers (Benjamin Nahawendi and his followers), but also their interpretation of biblical laws and their practices.[130]

[130] The allegorical method of interpretation, characteristic of Philo, was popular also among the Karaites; see Weiss, *Dor*, IV, 86 and Poznański, *MGWJ.*, 1897, 208, n. 1; comp. also H. Hirschfeld, *Jefeth b. Ali's Arabic Commentary to Nahum*, London 1911, 8 and 10 ff. The Karaites share also the view of Philo that the Decalogue is the text on which the whole Law is but a commentary (this view is found also in the later Midrashim; see the references by L. Löw, *Ges. Schr.*, I, 42. A similar view is found in p. Shekalim 6, 1. Reifmann, בית תלמוד, I, 350 and Weiss, *Dor*, IV, 141 are to be corrected accordingly). Saadia Gaon proved to them by it the possibility of an oral law (comp. Weiss, *Dor*, IV, 141) and the Karaites Nissi b. Noah (eleventh century; see lastly Harkavy, ס"תמ לענן, intr., VII) and Judah Hadassi (twelfth century) arranged their works, like Philo, according to this view. Comp. also Müller in *Oeuvres complètes*, XI, intr., XIX; Bacher, *Jewish Encyclopedia*, X, 583*b*.

The Karaite Zerah b. Nathan (end of sixteenth century) was much interested in the works of Philo (Neubauer, *Aus der Petersburger Bibliothek*, 75, 125). The famous nineteenth century Karaite Abraham Firkowitsch indeed asserts that Philo was a *Karaite* (preface to מבחר ישרים, 2*a*), but, according to him, Jesus was a Karaite likewise (חותם תכנית, appendix to מבחר ישרים, 54*a*, 56*a*; Kirkisani, ed. Harkavy, 305, 9 and Hadassi, *JQR.*, VIII (1896), 436 state that Jesus was a Sadducee); comp. I. B. Levinsohn, תעד הסופר, Odessa 1863, 18-9.

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